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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

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## No. 517

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EDWIN COURTNEY HUDSON, ET AL., *Petitioners,*

v.

ATLANTIC COAST LINE RAILROAD COMPANY; INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL., *Respondents.*

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**Petition for a Writ of Certiorari to the Supreme Court of the State of North Carolina**

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THORNTON H. BROOKS,
214 Southeastern Building,
Greensboro, North Carolina.
*Counsel for Petitioners.*

L. P. MCLENDON,
R. S. MCCLELLAND,
*Of Counsel.*

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v.

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**Petition for a Writ of Certiorari to the Supreme Court of the State of North Carolina**

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Petitioners pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of North Carolina entered in the above cause on October 12, 1955 (Appendix, p. 26), reversing a judgment of the Superior Court of the State of North Carolina in and for the County of New Hanover (R. pp. 63-4), and ordering a final judgment in favor of respondents.

## OPINIONS BELOW

The findings of fact and conclusions of law of the Superior Court (R. pp. 51-63) are not reported. The opinion of the Supreme Court of North Carolina (Appendix pp. 1-25) is reported in 242 N. C. 650, 89 S.E. 2d 441.

## JURISDICTION

The judgment of the Supreme Court of North Carolina was dated and entered October 12, 1955 (Appendix p. 25). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3).

The Federal questions herein presented were raised in the Superior Court by the Amended Complaint (Paragraphs 10-14, R. pp. 24-27), and were put in issue by the

Answer filed by the defendant unions to the Amended Complaint (Paragraph 8, R. pp. 40). The two Federal questions were specifically passed upon by the trial court and decided in favor of petitioners (Conclusions of Law Nos. 3, 4; R. pp. 62-3). Respondents challenged the decision of the trial court in its exceptions on appeal to the Supreme Court of North Carolina (Exceptions 40, 41; Assignments of Error 6, 8; R. pp. 73-4, 154). The two questions were argued in the briefs and orally before that Court by all parties. The opinion of that Court expressly holds that the 1951 amendment to the Railway Labor Act (Act of January 10, 1951, Chapter 1220, 64 Stat. 1238; 45 U.S.C. Sec. 152) is not in conflict with the Fifth Amendment to the Constitution (Appendix p. 20), referred to decisions that upheld or ruled invalid the amendment, and expressly recognized that the Supreme Court of Nebraska in the case of *Hanson* v. *Union Pacific*, infra, "reached the conclusion that the union shop amendment violated the Fifth Amendment" (Appendix p. 21). That Court likewise considered and rejected the second question herein presented (Appendix p. 15). The judgment of the Supreme Court of North Carolina is final by its terms.

## QUESTIONS PRESENTED

1. Whether the 1951 union shop amendment to the Railway Labor Act (Act of January 10, 1951, Chapter 1220, 64 Stat. 1238; 45 U.S.C. Sec. 152) is a valid Federal law which supersedes the laws of the State of North Carolina making a union shop void and illegal and the signing or enforcement of a union shop contract a misdemeanor.

2. Whether the petitioners' rights or privileges under the Constitution of the United States and the Railway Labor Act have been unlawfully invaded by the action of their bargaining agents (respondents herein) in their demands for, and insistence upon, a union shop agreement, it having been alleged and found as a fact by the trial court that in so doing the respondent labor organizations "exceeded their

proper authority as bargaining representatives"; that same "is for their own interest and financial gain, is contrary to the interests of the class they represent and hostile to the expressed wishes and interests of a large number of employees"; and that they have not "represented the plaintiffs and members of their class similarly situated (they being non-union or minority union members) without discrimination, fairly, impartially, and in good faith, but, on the contrary, have failed to discharge their obligation of complete loyalty to the interests of all the employees whom they represent."

## STATUTES INVOLVED

The pertinent constitutional and statutory provisions involved are set forth in Appendix C hereto.

## STATEMENT OF THE CASE

Petitioners filed their original Complaint on April 23, 1953. (R. 51.) Petitioners were and are ten employees acting individually as well as in a representative capacity for a class of fellow employees similarly situated. Defendants were their employer, the respondent Atlantic Coast Line Railroad Company, and thirteen labor organizations who were the authorized representatives of the employees of the railroad for their respective crafts. The Complaint sought an injunction restraining the respondent railroad and the unions from entering into a union shop agreement whereby membership in one of the unions would be a condition of continuing employment of the plaintiffs and their fellow employees by the railroad. A temporary restraining order was entered on April 23, 1955, enjoining the respondent railroad and the respondent labor organizations from demanding or executing a union shop agreement affecting petitioners and the members of their class and from causing a strike or lockout as a means of forcing such an agreement. (R. 13-15.) On September 30, 1953, an Amended Complaint was filed to which the respondents filed An-

swers. (R. 16, 31, 36.) Thereupon the action was tried, and the trial court made the following findings of fact (R. 51-62):

Petitioners bring the action individually as well as in a representative capacity on behalf of a class consisting of at least 1,580 fellow non-operating employees who are opposed to a union shop agreement between the respondent railroad and the respondent labor organizations. Each member of the class has a common joint and general interest in the questions of law and fact involved. The respondent railroad is a corporation with its principal office and place of business in Wilmington, North Carolina, operating as a common carrier within North Carolina and in other States. It is a carrier as defined in the Railway Labor Act. The respondent labor organizations are each craft unions and together are known as the non-operating unions of the respondent railroad. Each of them has been certified by the National Mediation Board or recognized by the respondent railroad as a representative of the employees of the respondent railroad for its respective class or craft, and has served as the authorized representative of such employees in that class or craft. No election for bargaining representatives has been conducted among the various crafts since 1947, nor has any demand for elections been made to that Board since 1947. The petitioners and their fellow employees of a class whom they represent are either regular members of one or the other defendant labor organizations or are eligible for membership therein. (R. 52-54.)

In early 1953 a large number of employees of the respondent railroad who were members of or eligible for membership in one or another of the respondent labor organizations formed an organization to oppose the execution of a union shop agreement between their employer and these labor organizations. Prior to the beginning of this action, approximately 1,580 such employees signed a petition indicating their opposition to the principle of the union shop. A number of other employees of the respondent railroad

other than those signing the petition are likewise opposed to the union shop and do not desire to be covered by a union shop contract. (R. 54-58.) In, or prior to, April 1953, 53 of the 77 employees of the respondent railroad who were members of or eligible for membership in the respondent American Train Dispatchers' Association petitioned President of that labor organization to cease negotiation for a union shop with the respondent railroad. The General Chairman of that labor organization acknowledged receipt of the letter on April 17, 1953. (R. 55-56.)

Beginning on February 5, 1951, respondent labor organizations have sought to obtain from the respondent railroad a union shop agreement covering the non-operating employees of the railroad and including the named plaintiffs and the class they represent. To this end they have served written notices on the respondent railroad, have utilized services of the National Mediation Board, and have negotiated with the respondent railroad directly. In March 1953 the respondent labor organizations agreed upon a type of union shop agreement which was identical in substance with the form of agreement entered into by the respondent labor organizations with other carriers in the United States; agreed to continue negotiations with respondent railroad until a union shop agreement was signed or until the respondent railroad refused to sign, in which event the refusal would be referred to the membership in all of the respondent labor organizations for a strike vote. The union shop agreement as thus agreed upon (R. 58) was presented to the respondent railroad duly signed by the proper officials of the respondent labor organizations on April 22, 1953, with statements which the respondent railroad reasonably interpreted as meaning that a strike would be called if the union shop agreement was not soon consummated. The unions would have called a strike had a union shop agreement not been reached except for the issuance of the temporary restraining order of April 23, 1953. (R. 56-59.) Petitioners and other members of their class have acquired

certain employment rights of value by reason of their original contract of employment and subsequent service with the respondent railroad, among which are seniority, vacations, holidays and benefits as voluntary members in the "Relief Department." They will be deprived of such rights under the terms of a union shop agreement unless they join one of the respondent labor organizations within the time prescribed. (R. 59-60.)

Respondent labor organizations have exceeded their proper authority as bargaining representatives of the members of their respective crafts. Their insistence upon a union shop agreement is for their own interests and financial gain, is contrary to the interests of the class they represent and hostile to the expressed wishes and interests of a large number of employees. By seeking a union shop agreement the respondent unions have not in several respects represented the petitioners and members of their class without discrimination, fairly, impartially and in good faith in that they failed or refused to petitioners and members of their class notice of and opportunity for hearing upon their proposal for a union shop; they failed or refused to consider the expressions of views and interests of the petitioners and their fellow employees; they seek to compel petitioners to become members of the labor organizations against their wills and convictions; they seek the loss of petitioners' jobs which will be bestowed on union members; they seek to compel the petitioners and their fellow employees to pay involuntary fees, dues and assessments as a condition of employment and the opportunity to earn a livelihood; and to become and remain members of the respondent labor organizations against their wills, or to be deprived of valuable rights. (R. 60-62.) The consummation of the proposed union shop agreement would cause petitioners serious and irreparable damage and injury for which they have no adequate remedy at law. (R. 62.) As its conclusions of law the Superior Court stated that the agreement proposed by the respondent labor organizations

on April 22, 1953, was illegal as contrary to the laws and public policy in North Carolina; that the respondent labor organizations have exceeded their proper authority as bargaining representatives of the members of their respective crafts by the union shop demands; that the proposed agreement of April 22, 1953, if consummated would deprive the plaintiffs of valuable rights and liberties protected by the Constitution and laws of the United States and of North Carolina; and that irreparable injury would result unless an injunction were issued. (R. 62-63.)

Pursuant to its findings of fact and conclusions of law, the Superior Court issued a final injunction on November 5, 1954. (R. 63-64.) Respondent labor organizations filed exceptions (R. 65-74) and on October 12, 1955, the Supreme Court of North Carolina, by a majority opinion, reversed the judgment and dissolved the restraining order. Appendix, p. 25.)

The Supreme Court of North Carolina held that a union shop agreement complying with the provisions of the union shop amendment to the Railway Labor Act (45 U.S.C. 152) is not void under the North Carolina statute (N. C. Session laws 1947, c. 328). It stated that the proposed union shop agreement was clearly in direct conflict with the North Carolina statute, but that Congress by the union shop amendment to the Railway Labor Act enacted by Congress under its power to regulate commerce among the several states superseded any state statute in conflict therewith. Since it found the union shop agreement proposed by the respondent labor organizations to embody terms sanctioned by the Federal statute it found it not illegal.

With respect to the findings of the Superior Court that the respondent labor organizations have acted arbitrarily and in disregard of the wishes of the employees of the respective crafts, the Court concluded that a union need not first ascertain the wishes of the craft or class it represents before making demands for a union shop agreement.

In determining the issue whether a union shop agreement if consummated would deprive petitioners of individual property rights of value and liberties protected by the Constitution and laws of the United States and the State of North Carolina, the Court apparently limited its consideration to the contention of petitioners that the union shop amendment to the Railway Labor Act unreasonably discriminated as between operating employees and non-operating employees in violation of the Fifth Amendment. Concluding that this objection was not well taken, the Court declined to consider other grounds of Constitutional invalidity of the union shop amendment, such as those which had been considered fatal to it in other cases, on the ground that specific allegations of unconstitutionality on these points had not been alleged by petitioners. The Court also observed that although the judgment might be vacated on the ground that petitioners had not shown sufficient proof of irreparable injury, the Court declined to base its reversal on that ground. Justice Parker dissented without opinion.

## REASONS FOR GRANTING THE WRIT

1. The decision of the Supreme Court of North Carolina in the instant case concerns the same issue as that involved in No. 451, *Railway Employees' Department* v. *Hanson*, in which the Jurisdictional Statement was filed on October 7, 1955. In the *Hanson* case the Supreme Court of Nebraska (*sub nom. Hanson* v. *Union Pacific Railroad Co.*, 160 Neb. 669, 71 N.W. 2d 526) had affirmed the issuance of an injunction against a union shop clause substantially identical with that here involved on the ground that the union shop amendment to the Railway Labor Act violated the provisions of the Constitution of the United States. This direct conflict between the decisions is recognized by the opinion below. (Appendix, p. 21.) The petition in this case should be granted in order that the decision will be reviewed by this Court at the same time that it reviews the appeal in No. 451, *supra*.

2. The Federal questions decided by the Supreme Court of North Carolina are substantial questions not heretofore decided by this Court. The union shop amendment was considered by the Supreme Court of North Carolina to be valid under Congress' power to regulate interstate commerce. But this "commerce power" is limited by the requirements that the subject of regulation bear a substantial relationship to interstate commerce and must be exercised in subjection to the guaranties found in the Bill of Rights. *North American Co.* v. *Securities & Exchange Commission* (1946), 327 U.S. 686, 704; *Railroad Retirement Board* v. *Alton R.R. Co.* (1935), 295 U.S. 330, 347; *Virginian Ry Co.* v. *System Federation* (1937), 300 U.S. 515, 553.

There is absent any evil which required the enactment of the union shop amendment as a remedy; and there is lacking any legitimate objective to be promoted thereby. The right to work is one of the inalienable liberties guaranteed to all by the Constitution and may not be made the subject of unreasonable or arbitrary conditions.

In *Smith* v. *Texas* (1914), 233 U.S. 630, a statute was held invalid which made it a crime for one to act as a conductor of a freight train if he had not served as conductor for at least two years, the Court saying (p. 636) that "the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling." In *Liggett Co.* v. *Baldridge* (1928), 278 U.S. 105, a statute was invalidated which required all owners of drug stores to be licensed pharmacists. *Takahashi* v. *Fish & Game Commission* (1948), 334 U.S. 410, struck down a statute which denied a resident of California a license to fish off its shores because he was an alien.

Union membership is just as unreasonable and arbitrary a condition of railroad employment as the qualification struck down in the cited cases. Union membership cannot, consistent with due process of law, be used to admit to railroad employment only its members and exclude others

equally competent to do the work; nor can it create a privileged class of union members with a monopoly of the right to work in the railroad industry.

The freedom of association which secures the right to join—or not to join—a labor organization is an ancillary of the right to work and is protected by the Fifth Amendment's guaranty of liberty as well as the First Amendment's guaranty of freedom of petition and assembly. *Thomas* v. *Collins* (1945), 323 U.S. 516, held that a statute which required a union organizer to register and secure a card before engaging in his activities was violative of the constitutional guaranty of freedom of speech and assembly. The instant case involves the right of employees not to join a union; the right not to be compelled to pay and obey as a condition of employment. Since employees have been held by the decisions of this Court to be free to join unions, they must also be free not to join. Freedom of a worker to join a union and freedom not to join are parallel and co-existent constitutional rights. *Lincoln Union* v. *Northwestern Co.* (1949), 335 U.S. 525, 537. To justify impairment of First Amendment freedoms there must be some evil created by their unfettered exercise. *Board of Education* v. *Barnette* (1943), 319 U.S. 624. But in the instant case, no evil is present which requires forcing non-union railroad employees to join a union.

The North Carolina Supreme Court decided the question of whether the respondent labor organizations' demands upon the respondent railroad for a union shop agreement was disloyal and violative of their trust under the Railway Labor Act in a way probably not in accord with applicable decisions of this Court. In *Steele* v. *Louisville & Nashville R.R. Co.* (1944), 323 U.S. 192, the certified bargaining representative negotiated an agreement with the railroad whereby only white firemen could be promoted to engineers. Upon the complaint of a Negro fireman against the union and the railroad, it was held that injunctive relief should have been granted by the state court. This Court

pointed out that "The representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and which is also under an affirmative constitutional duty equally to protect those rights." It was said:

> "While the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership, it does require the union, in collective bargaining and in making contracts with the carrier, to represent non-union or minority union members of the craft without hostile discrimination, fairly, impartially, and in good faith. Wherever necessary to that end, the union is required to consider requests of non-union members of the craft and expressions of their views with respect to collective bargaining with the employer and to give to them notice of and opportunity for hearing upon its proposed action."

To similar effect is *Tunstall* v. *Brotherhood* (1944), 323 U.S. 210, and *Brotherhood* v. *Howard* (1952), 343 U.S. 768, where it was pointed out that "these train porters are threatened with loss of their jobs because they are not white and for no other reason."

The findings of fact by the trial court (R. 58-61) that the respondent Unions have exceeded their proper authority as bargaining representatives in the manner detailed were not disturbed by the Supreme Court of North Carolina. The constitutions and by-laws of each respondent Union are before the Court (R. 76, 167-8). The constitution (Pl. Ex. 16) of one union provides that Negroes "shall be admitted to membership in separate lodges" under the jurisdiction of and represented by the delegate of the nearest white local. The constitution of another union (Pl. Ex. 20) provides that "any member sending letters or circulars to any member or lodge, or in any way circulating reports liable to cause trouble or injure the Brotherhood or its members shall be expelled." Members are prohibited by the constitutions and by-laws from interfering with legislative matters which

adversely affect the interest of the members; must carry out instructions of union officers; must not speak falsely or maliciously of another member, or vilefy his character; and must not be guilty of conduct unbecoming a member.

3. The questions presented are of importance in the construction and administration of the Railway Labor Act. There are eighteen States which presently have statutory or Constitutional prohibitions against the union shop, including every State in which respondent railroad operates. Questions similar to those here presented are pending in cases in Texas, Virginia, Georgia and Florida (R. 122), as well as in the Nebraska case now before the Court in No. 451. Confusion and uncertainty will persist until these important and unsettled questions concerning the Constitutionality and construction of the union shop amendment to the Railway Labor Act are settled by this Court.

## CONCLUSION

Wherefore a Writ of Certiorari to the Supreme Court of North Carolina should be granted.

Respectfully submitted,

THORNTON H. BROOKS,
L. P. McLENDON,
Greensboro, N. C.,
R. S. McCLELLAND,
Wilmington, N. C.,
*Counsel for Petitioners.*

November 14, 1955.

# APPENDIX

## APPENDIX A

## NORTH CAROLINA SUPREME COURT
## FALL TERM 1955

EDWIN COURTNEY HUDSON, LUTHER JEFFERSON DEVANE, WILLIAM RUSH CHISHOLM, JOE MARION TILLEY, HERBERT LEWIS DARDEN, THOMAS ALFRED SHEPARD, JR., IRVIN ELDRIDGE RACKLEY, JOHN HUBERT SHANNON, CLARK WELDON POISSON, JOHN MONROE BINKLEY, FOR AND ON BEHALF OF THEMSELVES AND ALL OTHER EMPLOYEES OF ATLANTIC COAST LINE RAILROAD COMPANY IN NORTH CAROLINA WITH A COMMON OR GENERAL INTEREST,

v.

ATLANTIC COAST LINE RAILROAD COMPANY, INTERNATIONAL ASSOCIATION OF MACHINISTS, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS & HELPERS OF AMERICA, INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELPERS, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BROTHERHOOD of RAILWAY CARMEN OF AMERICA, INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, ORDER OF RAILROAD TELEGRAPHERS, BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AMERICAN TRAIN DISPATCHERS ASSOCIATION.

### No. 170 — New Hanover

Appeal by defendant unions from Hubbard, Special Judge, Special November Term, 1954, of New Hanover.

Action to enjoin defendant unions and defendant carrier from entering into any union shop agreement whereby membership in a labor union is made a condition of employ-

ment of the named plaintiffs and fellow employees similarly situated.

On 23 April, 1953, when this action was commenced, a temporary order, restraining the negotiation of such an agreement and the calling of a strike in support of demands therefor, was signed; and this remained in effect until the final hearing.

Undisputed facts include the following:

Defendant carrier is a "carrier" as defined in the Railway Labor Act.

The thirteen (13) defendant unions are standard labor organizations, under the Railway Labor Act. They are the duly designated, authorized and recognized bargaining representatives of the nonoperating employees of defendant carrier in their respective crafts or classes. Since 1946, no election for bargaining representatives has been conducted by the National Mediation Board among the employees of any of these crafts nor has any request or demand for such an election or change in certification of bargaining representatives been made. The plaintiffs and defendant carrier fully recognize these unions and in no way challenge their right to negotiate collective bargaining agreements as to "rates of pay, rules, working conditions or any other matters which are not prohibited by law, . . ."

The ten (10) named plaintiffs bring this action in their own behalf and on behalf of "their fellow employees of a class whom they represent and who are similarly situated, (who) are either regular members of one or the other of the defendant labor organizations or are eligible for membership therein, and will be covered and bound by the terms of any agreement entered into between the aforesaid defendant labor organizations and the defendant Atlantic Coast Line."

The ten (10) named plaintiffs are members of or eligible for membership in five (5) of the thirteen (13) defendant unions, viz.:

Hudson is a member of the American Train Dispatchers Association. Binkley is a member of the Brotherhood of Railway Carmen of America. Rackley is a member of the Order of Railroad Telegraphers. DeVane is a member of, and Tilley, Shepard, Chisholm, Darden and Shannon are eligible for membership in, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Expres sand Station Employees. Poisson is eligible for membership in the Brotherhood of Maintenance of Way Employees.

As to Chisholm, the court found that, while eligible to become a member, his position was excepted "from the bulletin and displacement rules of the collective bargaining agreement"; that, on account thereof, he would not be required to join the union by the terms of the proposed union shop agreement; and the court made its conclusion of law that "Chisholm is not a proper party and the action should be dismissed as to him." As to Poisson, there is the further finding that he "is not employed by the Defendant Carrier, but retains seniority rights in the class represented by the Brotherhood of Maintenance of Way Employees."

The named plaintiffs' present rights under employment, on account of seniority or otherwise, are based upon collective bargaining agreements concerning rates of pay, rules, and working conditions, entered into between defendant carrier and defendant unions.

From 5 February, 1951, defendant unions sought to obtain from defendant carrier a union shop agreement within the terms of the Union Shop Amendment (10 January, 1951) to the Railway Labor Act. Defendant carrier declined to enter into a union shop agreement. On 22 April, 1953, at 2:30 p.m., at a conference arranged for further negotiations, defendant unions presented to defendant carrier a proposed union shop agreement identical in substance to that previously made between defendant unions and the Pennsylvania Railroad and other carriers. Defendant unions, at such conference, made known their determination to continue negotiations until defendant carrier signed a union

shop agreement such as that presented, or one embodying substantially the same terms, or until defendant carrier refused to do so; and that, in the event of such refusal, defendant unions would refer, by ballots previously prepared and printed, the question, to strike or not to strike for such union shop agreement, to their respective members. At the conference on the afternoon of 22 April, 1953, the discussion consisted largely of inquiries by the representative of defendant carrier as to the meaning of various provisions of the proposed union shop agreement. No agreement having been reached, the conference was recessed until the next day; but further discussion and negotiation were stayed by the restraining order obtained by plaintiffs.

The original complaint, upon which the restraining order was issued, attacked the proposed union shop agreement (1) as being in violation of the North Carolina statute, sometimes called the Right to Work Act, Session Laws of 1947, ch. 328, GS 95-78 et seq., and (2) as being contrary to the expressed wishes and interests of a large number of employees of defendant carrier. No reference was made to the Union Shop Amendment to the Railway Labor Act nor was it alleged that the proposed union shop agreement would deny to any plaintiff any right guaranteed to him by the Constitution of the United States or by any federal statute.

On or about 7 May, 1953, the defendant unions removed the cause to the United States District Court for the Eastern District of North Carolina. Later, in the Superior Court of New Hanover County, an amended complaint, verified 30 September, 1953, was filed, in which plaintiffs alleged that such filing was "prior to the expiration of the period for the defendants to answer the original complaint (the period having been extended by the pendency of the Motion to Remand in the United States District Court)."

In their amended complaint, plaintiffs set forth their original allegations; and thereupon new matter, (1) that

the efforts of defendants to obtain a union shop agreement constitute a breach of trust, being contrary to the expressed wishes and interests of a large number of employees, etc., and (2) that "the negotiations referred to constitute a serious threat to their individual property rights and liberties protected and guaranteed by and under the Constitution of the United States, the Constitution of the State of North Carolina, and the Federal and State laws and statutes." The only specification of denial of rights guaranteed by the Constitution of the United States, or by any federal statute, is that the Union Shop Amendment to the Railway Labor Act "is invalid, null and void as being in violation of the Fifth Amendment to the Constitution of the United States inasmuch as Congress in enacting the said amendment arbitrarily, discriminatorily, unreasonably and capriciously accorded less favorable treatment to nonoperating railroad employees with respect to the rights of individual employees in connection with union shop agreements than is accorded to other employees in occupations affecting commerce."

In answering the amended complaint, defendant unions aver that, upon the *second* removal of this cause to the District Court of the United States for the Eastern District of North Carolina, following the filing of the amended complaint, the plaintiffs filed in said court a motion to remand, stating in answer to the allegations of the removal petition, "It is denied that the plaintiffs based their claim for relief upon the Constitution and laws of the United States." Defendant unions further aver that, induced by plaintiffs' disclaimer as to reliance upon rights arising under the Constitution and laws of the United States, the District Court was induced to remand the cause, the second time, to the Superior Court of New Hanover County, upon the ground that, "The cause is one arising under the North Carolina statute and the plaintiff must prevail, if at all, through the effectiveness of such statute."

Plaintiffs filed a reply, but no reference was made to

the allegations of defendant unions summarized in the preceding paragraph. However, the record before us is barren as to evidence, documentary or otherwise, stipulations, findings of fact, etc., as to what occurred in the course of the two visits made by this cause to the District Court. The only data in this record advising us of these events is gleaned from the references in the pleadings as set out above.

Uncontradicted evidence is to the effect that defendant carrier had 19,026 employees; that prior to the conference arranged for the afternoon of 22 April, 1953, petitions expressing opposition to a union shop agreement were circulated among the employees; and that some 1,580 nonoperating employees signed such petitions. The total number of nonoperating employees is not shown. Nor, *except as stated below*, does the evidence show the number of employees in the respective crafts, the number of union members as compared with the number of nonunion employees in the respective crafts, or the number within each craft who so expressed opposition to a union shop agreement. It does appear that in April, 1953, there were approximately 77 employees of the defendant carrier who were members of, *or eligible for membership in*, the American Train Dispatchers Association; and further, that 53 of these employees had expressed opposition to a union shop agreement. How many of the 77 or the 53 were union members is not shown.

Defendant carrier admits in substance the allegations of fact set forth in the amended complaint and concurs in plaintiffs' position as to the applicable law; and, since the North Carolina statute upon which plaintiffs rely creates a criminal offense, defendant carrier seeks an adjudication as to whether the making of such a union shop amendment would constitute a criminal act.

Defendant unions controvert certain allegations of fact, but contend primarily that a union shop agreement such as that proposed by them to defendant carrier, and their ef-

forts to obtain such agreement, were in all respects legal and proper.

The union shop agreement proposed by defendant unions complies in all respects with the provisions of the Union Shop Amendment to the Railway Labor Act.

Upon waiver of jury trial, the court below, upon testimony and documentary evidence, made and set forth findings of fact and conclusions of law. Findings of fact, and evidence in support thereof, other than stated above, insofar as deemed relevant to decision, will be discussed in the opinion.

A final decree was entered, making "perpetual and permanent" the restraining order of 23 April, 1953, and adjudging that defendants pay the costs. Defendant unions, in apt time, filed exceptions to certain of the findings of fact, to all of the conclusions of law, and excepted to the final decree or judgment and appealed therefrom; and upon appeal they assign errors.

L. P. McLendon, Thornton H. Brooks and R. S. McClelland for plaintiffs, appellees.

M. V. Barnhill, Jr., and Alan A. Marshall for defendant Atlantic Coast Line Railroad Company, appellee.

Lester P. Schoene, Milton Kramer and George Rountree, Jr., for defendant unions, appellants.

Bobbitt, J. Is a union shop agreement, complying in all respects with the provisions of the Union Shop Amendment to the Railway Labor Act, Act of Congress, Jan. 10, 1951, ch. 1220, 64 Stat. 1238, 45 USCA sec. 152, Eleventh, hereinafter called Union Shop Amendment, void under the North Carolina statute, sometimes called the Right to Work Act, Session Laws of 1947, ch. 328, GS 95-78 et seq., hereinafter called the 1947 Act or the North Carolina statute? This question, of primary importance to decision, must be answered, "No." The reasons are stated below.

A closed shop agreement, *a fortiori* a union shop agreement, has been recognized as valid in most jurisdictions unless abrogated or restricted by statute. 31 Am. Jur. 876,

Labor, sec. 108, 1954 Cumulative Supplement, p. 99; 56 CJS 192, Master and Servant, sec. 28(40). In the absence of statute, Restatement of the Law of Torts, Vol. IV, sec. 788, under the caption, "Closed Shop," gives the generally accepted rule as follows: "Restriction of employment by an employer throughout his business, or on specified jobs within it, to workers who are members of a labor union, or of a particular union, is a proper object of concerted action by his employees."

It was so decided in North Carolina in *S.* v. *Van Pelt*, 136 N.C. 633, 49 S.E. 177, 68 L.R.A. 760, 1 Ann. Cas. 495. The Court's opinion by Connor, J., and the concurring opinion of Clark, Ch. J., set forth cogently the reasons in support of this view. As expressed succintly by Clark, C. J.: "It was not unlawful for the carpenters' union to try to induce the prosecutor to employ none but members of their union, neither illegal threats nor violence or other unlawful means being used; nor was it forbidden by any law to publish the fact of his refusal and to ask those friendly to their organization not to patronize him."

But the common law in North Carolina as so declared by this Court in 1904 was abrogated by the 1947 Act of our General Assembly, which declared the public policy of North Carolina to be "that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization or association." Specifically, the 1947 Act provides (1) that union membership shall not be required or forbidden as a condition of employment or continuation therein; (2) that no employer shall require, as a condition of employment, the payment of dues or other fees to any labor union; and (3) that any agreement between an employer and a labor union requiring such membership or payments as a condition of employment shall be unlawful. The 1947 Act, challenged as violative of provsions of the Federal and State Constitutions, was held by this Court a valid and constitutional exercise of legislative power by our General Assem-

bly. *S.* v. *Whitaker,* 228 N.C. 352, 45 S.E. 2d 860; *S.* v. *Bishop,* 228 N.C. 371, 45 S.E. 2d 858. See also, *In re Port Publishing Co.,* 231 N.C. 395, 57 S.E. 2d 366, 14 A.L.R. 2d 842. In *S.* v. *Bishop,* supra, it was held that an act in violation of the statute was a misdemeanor.

The Whitaker case and a Nebraska case, involving substantially the same questions, were considered together, upon appeals to the Supreme Court of the United States; and the citation to the reported decision bears the caption of the Nebraska case. The decision of this Court was affirmed. *Lincoln Fed. L.U.* v. *Northwestern I. & M. Co.,* 335 U.S. 525, 69 S. Ct. 251, 93 L. Ed. 212. See also, *American Fed. of Labor* v. *American Sash & Door Co.,* 335 U.S. 538, 69 S. Ct. 258, 93 L. Ed. 222, 6 A.L.R. 2d 481.

The 1947 Act of our General Assembly embodied substantially the provisions of constitutional amendments and legislative enactments adopted in some seventeen states. Persuasive arguments were and are urged in favor of and against this legislation. It was not for this Court to say whether such legislation was desirable, appropriate or wise. Nor did this Court undertake to approve or disapprove the public policy of North Carolina as expressed in the 1947 Act. But it was determined, as stated by Seawell, J., that it is for the legislative power to delineate "the area within which two factions with largely conflicting aims may wage their disputes without transgressing the public welfare."

In the Whitaker case, Seawell, J., for this Court, and Mr. Justice Black, for the Supreme Court of the United States, reviewed the history of labor legislation and related court decisions. A restatement thereof is unnecessary. Suffice it to say that the conclusion reached was that state constitutional and legislative provisions, such as those embodied in our 1947 Act, are valid except to the extent they conflict with an Act of Congress enacted within the orbit of Congressional authority.

It is clear that the proposed union shop agreement is

in direct conflict with the 1947 Act. Nothing else appearing, such agreement would be void. It is equally clear that the Union Shop Amendment does not invalidate the 1947 Act. Except to the extent Congress, in enacting labor legislation related to interstate commerce, has preempted the field, the 1947 Act is in full force and effect. *Local Union No. 10, A. F. of L.* v. *Graham*, 345 U.S. 192, 73 S. Ct. 585, 97 L. Ed. 946. Our attention, therefore, must turn to the Union Shop Amendment.

Upon adoption of the Railway Labor Act, May 20, 1926, ch. 347, 44 Stat. 577, Congress "made a fresh start toward the peaceful settlement of labor disputes affecting railroads." *Virginia Ry. Co.* v. *System Federation No. 40*, 300 U.S. 515, 57 S. Ct. 592, 81 L. Ed. 789. This Act, as amended, is now codified as 45 U.S.C.A. secs. 151 et seq. The basic principle underlying this Act is embodied in these provisions: "Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purpose of this chapter." 45 U.S.C.A. sec. 152, Fourth. In the case cited, the Supreme Court of the United States sustained the constitutionality of the Railway Labor Act, both under the commerce clause and as to the Fifth Amendment, in relation to the requirement that the carrier treat exclusively with the employees' duly chosen bargaining representative. As stated by Mr. Justice Stone (later Chief Justice): "The power of Congress over interstate commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders. . . . It was for Congress to make the choice of the means by which its objective of securing the uninterrupted service of interstate railroads was to be secured, and its judgment, supported as it is by our long experience with industrial disputes, and the his-

tory of railroad labor relations, to which we have referred, is not open to review here."

As enacted in 1926, the Railway Labor Act contained no provision as to union shop agreements. But, as amended by Act of June 21, 1934, 48 Stat. 1185, it was provided that no carrier should require any employee to join or not to join any labor organization as a condition of employment nor should any carrier deduct from the wages of employees any dues, etc., payable to labor organizations. 45 U.S.C.A. sec. 152, Fourth and Fifth.

It is of interest to note that the 1934 amendments were supported by labor organizations because of the prevalence then of so-called "company dominated" unions. The labor organizations sought to restrict the ban on union shop agreements to such local unions or associations, but Congress saw fit to mak ethe provision apply to all unions. Report No. 2811, 7 August, 1950, Committee on Interstate and Foreign Commerce, 81st Congress, 2d Session, House Miscellaneous Reports, Vol. VI; Report No. 2263, 9 August, 1950, Committee on Labor and Public Welfare, 81st Congress, 2d Session, Senate Miscellaneous Reports, Vol. V. As intended, the 1934 legislation invalidated union shop agreements theretofore in effect. *Brotherhood of R. Shop Crafts* v. *Lowden*, 86 F. 2d 458, 108 A.L.R. 1128, certiorari denied 300 U.S. 659, 57 S. Ct. 435, 81 L. Ed. 868.

When the 1947 Act was adopted, the Railway Labor Act prohibited a union shop agreement between *a carrier* and a labor organization; and the 1947 Act prohibited such an agreement between *any employer* and a labor union. There was no conflict.

This continued until 10 January, 1951, when Congress enacted the Union Shop Amendment (45 U.S.C.A. sec. 152, Eleventh), which, in pertinent part, provides:

"Eleventh. Notwithstanding any other provisions of this chapter, or *of any other statute or law* of the United States, or Territory thereof, or *of any State*, any carrier or carriers as defined in this chapter and a labor organization

or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

> "(a) to make agreements, requiring as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: PROVIDED, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership . . .
> "(d) Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended." (Italics added.)

Appellees contend that the effect of this Union Shop Amendment goes no further than to remove the ban previously placed on union shop agreements by 45 U.S.C.A. sec. 152, Fourth and Fifth, thus disclaiming a national policy hostile to such agreements. Therefore, they contend, the federal prohibition gone, the validity of such agreements is determinable in relation to applicable state law. For this position they rely upon *Algoma P. & V. Co.* v. *Wisconsin Emp. Rel. Bd.*, 336 U.S. 301, 69 S. Ct. 584, 93 L. Ed. 691.

The Algoma case is distinguishable. Under a Wisconsin statute, a union shop agreement was declared an "unfair labor practice" unless affirmatively authorized by at least two-thirds of the employees voting secretly in a referendum. For reasons not material here, the employer entered into a union shop agreement that had not been so authorized. An employee was discharged for failure to pay union dues.

Upon complaint to the Wisconsin Employment Relations Board, this action was held an "unfair labor practice," the employee was ordered reinstated and the employer required (1) to compensate him for the loss of pay, and (2) to cease and desist from giving effect to the maintenance-of-membership clause. The question presented was whether the controversy was in the exclusive jurisdiction of the National Labor Relations Board under the National Labor Relations Act. 29 U.S.C.A. sec. 160(a). The cited statute (as worded when relevant to the Algoma case) empowered the National Labor Relations Board "as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 158) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law or otherwise." It was held that this statute was applicable only to the unfair labor practices listed in Section 158; and the inquiry narrowed to Section 158(3), which contained this proviso: "That nothing *in . . . this title or in any other statute of the United States,* shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 159(a) of this title, in the appropriate collective bargaining unit covered by such agreement when made." (Italics added.) The Supreme Court of the United States affirmed the Wisconsin courts in holding that the Wisconsin statute was not superseded by the quoted provisions of the National Labor Relations Act. Mr. Justice Frankfurter said: "The short answer is that sec. 8(3) (29 U.S.C.A. 158(3)) merely disclaims a national policy hostile to the closed shop or other forms of union-security agreement. This is the obvious inference to be drawn from *the choice of the words* 'nothing *in this Act* . . . or *in any other statute of the United States,*' and it is confirmed by legislative history." (Italics added.) After the decision of the

Wisconsin board, and before consideration on appeal, the National Labor Relations Act was amended 23 June, 1947, 61 Stat. 151, 29 U.S.C.A. sec. 164(b), so as to provide expressly that "nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law." There is no such provision in the Railway Labor Act.

But the Union Shop Amendment does more than remove the previous ban on union shop agreements. While it does not require, it expressly *permits*, i.e., *authorizes*, a carrier and a labor union duly designated and authorized to represent employees in accordance with the Railway Labor Act to enter into such an agreement if they see fit to do so, "notwithstanding any other provisions of this Act, or *of any other statute* or *law . . . of any State . . .*" (Italics added.) The decision in the Algoma case (1949) would seem to explain, at least in part, the choice of words used in the Union Shop Amendment (1951) to the Railway Labor Act, i.e., the explicit reference to any *statute* or *law of any State*. In the legislative debates preceding the enactment of the Union Shop Amendment, the state Right to Work statutes and constitutional provisions were much discussed; and it was made quite plain that a union shop agreement made under authority expressly granted would override conflicting state laws and that it was so intended. Congressional Record, Vol. 96, Part 12, 81st Congress, 2d Session, pp. 16262, 16270, 16280, 16323, 16327—and 16376, where the defeat in the Senate of the Holland amendment is recorded; pp. 17055, 17056, 17057, 17058, 17059—and 17061, where the defeat in the House of the motion to recommit is recorded. In short, the Union Shop Amendment, as stated by Judge Learned Hand, exempts union shop agreements "from nullification by other statutes or laws." *Otten* v. *Baltimore & O. R. Co.*, 205 F. 2d 58 (C.C.A. 2d, 1953).

The Constitution of the United States, Article I, Section 8, Clause 3, confers on Congress the power to regulate commerce among the several states; and legislation enacted by Congress, within the power so granted, supersedes state statutes and laws in conflict therewith. *Napier* v. *Atlantic Coast Line R. Co.*, 272 U.S. 605, 47 S. Ct. 207, 71 L. Ed. 432.

The conclusion reached is that a union shop agreement, between a carrier and a labor organization duly designated, authorized and recognized as the bargaining representative of a craft or class of the carrier's employees, to the extent it embodies terms expressly sanctioned by the Union Shop Amendment is not invalid; for in such case and to such extent the federal statute supersedes the state statute. The union shop agreement, proposed by defendant unions, embodies terms sanctioned by the federal statute.

The conclusion stated is in accordance with that reached in the following cases: *International Ass'n of Machinists* v. *Sandsberry*, 277 S.W. 2d 776, Court of Civil Appeals of Texas, Amarillo, appeal now pending in the Supreme Court of Texas; *Moore* v. *Chesapeake & Ohio Ry. and Ward* v. *Seaboard Air Line Railroad Company*, Richmond (Va.) Hustings Court, 34 L.R.R.M.* 2667, appeal now pending in the Supreme Court of Appeals of Virginia; *In re Florida East Coast Ry. Co.*, U. S. District Court for Southern District of Florida, 32 L.R.R.M.* 2533; *Hanson* v. *Union Pacific R.R. Co.*, 160 Neb. 669, 71 N.W. 2d 526.

Appellees cite decisions, e.g., *Steele* v. *Louisville & Nashville R.R. Co.*, 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173, to the effect that a collective bargaining agent must act fairly and impartially in behalf of all employees whom it represents, union members and nonmembers alike. Suffice it to say that there is no allegation or suggestion that the collective bargaining agreements, negotiated by defendant unions with defendant carrier, covering rates of pay, rules and

* Refers to Labor Relations Reference Manual, an unofficial reporter published by Bureau of National Affairs, Inc., Washington, D. C. Cases cited by reference to LRRM are not published in an official reporter. Hence, the original texts were obtained and examined.

working conditions, in any respect are discriminatory against plaintiffs or any other employees of the defendant carrier, union members or nonmembers.

Appellees further contend, and the court found as facts, that defendant unions, through their chief officers, acted arbitrarily and in disregard of the wishes of the employees of the respective crafts or classes. In last analysis, the only evidence supporting these findings is to the effect that the chief officers of defendant unions, notwithstanding known opposition of some employees to the making of a union shop agreement, made demands on defendant carrier for such agreement without ascertaining by referendum or otherwise the wishes of a majority of the employees within the respective crafts. Admittedly, defendant unions since 5 February, 1951, had been endeavoring to negotiate a union shop agreement with defendant carrier. The evidence dispels any suggestion that defendant unions' efforts to obtain a union shop agreement were conducted in secrecy; rather, the conclusion is inescapable that the opposing expressions by petition arose from the fact that the efforts of the bargaining agents were well known. The demands therefor, and the opposition to, a union shop agreement were well known and communicated to the defendant carrier prior to the conference on 22 April, 1953.

The inquiry narrows to this question: Must the bargaining agent, before making demands for a union shop agreement, first ascertain the wishes of the employees of the craft or class it represents with reference thereto and be governed by the wishes of the majority as expressed in a referendum or otherwise?

We are constrained to hold that such referendum was not required. By Act of June 23, 1947, 61 Stat. 136 et. seq., Congress amended Section 8(a) of the National Labor Relations Act (29 U.S.C.A. sec. 151 et seq.) by providing in Section 8(a)(3) thereof "that nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organiza-

tion . . . to require as a condition of employment membership therein . . . if, following the most recent election held as provided in Section 9(e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement"; and amended Section 9(e) so as to provide the procedure and conditions for the conduct of such referendum. But such requirement for a referendum as a condition precedent to the making of such an agreement was eliminated by Act of October 22, 1951, 65 Stat. 601, now codified as 29 U.S.C.A. sec. 158(a)(3) and sec. 159(e), so that a union shop agreement is permissible as provided unless "within one year preceding the effective date of such agreement," an election is called on application of "30 per centum or more of the employees in a bargaining unit covered by such agreement" and "a majority of the employees eligible to vote in such election" have voted by secret ballot to rescind the authority of such labor organization to make such an agreement. The Senate and House reports relating to Senate Bill 1959, which became the Act of October 22, 1951, explain the reason for the elimination of the precedent referendum in these words: "Such elections have imposed a heavy administrative burden on the Board, have involved a large expenditure of funds, and have almost always resulted in a vote favoring the union shop." U. S. Code Congressional and Administrative Service, 82nd Congress, First Session 1951, Vol. 2, p. 2381.

The significance of the foregoing is that the same Congress which eliminated the necessity for a referendum under the National Labor Relations Act passed the Union Shop Amendment (1951) to the Railway Labor Act; and the question of whether provision should be made for a referendum was considered but proposal for such requirement was rejected. House Report No. 2811, August 7, 1950, on Bill Amending Railway Labor Act, *supra;* Congressional Record, Vol. 96, Part 12, 81st Congress, 2d Session, pp. 17055 and 17056. No provision for any referendum was in-

corporated in the Union Shop Amendment or appears elsewhere in the Railway Labor Act.

It must be concluded that the intent of Congress, as presently expressed in the Railway Labor Act, is that the employees in a collective bargaining unit, having selected their representative, authorized such representative to negotiate and act for them; and the Union Shop Amendment, by its terms, recognizes the negotiation of a union shop agreement as a proper subject for collective bargaining by the representative of such collective bargaining unit. The union membership requirement is obligatory under a union shop agreement only as long as the union so selected remains such bargaining agent. Should a majority of the collective bargaining unit desire to choose another bargaining agent, or none, the procedure therefor is available. 45 U.S.C.A. sec. 152. The new representative so chosen is at liberty to reopen and renegotiate any collective bargaining agreement, eliminating the union shop provision. The injunction in this case has been in effect since 23 April, 1953. Plaintiffs and others similarly situated have had ample time to choose new representatives, if such was desired by a majority of the respective crafts. But no demand for a redetermination of bargaining representatives has been made since 1946. The conclusion reached is in accord with *Goodwin* v. *Clinchfield R.R. Co.*, 125 F. Supp. 441 (E.D. Tenn. 1954); *Austin* v. *Southern Pac. Co.*, 50 Calif. App. 2d 292, 123 P. 2d 39.

It is not for us to review the arguments of considerable weight both for and against the wisdom of provisions requiring a referendum either prior or subsequent to the making of a union shop agreement. Nor is it for us to say that, in respect of union shop agreements, the provisions of the National Labor Relations Act are preferable to the provisions of the Railway Labor Act, or vice versa. Nor is it for us to say that the differentiating factors between carriers and industry generally, in the field of labor relations and otherwise, are not sufficient to warrant the difference

between these two Acts. These matters are determinable in the legislative sphere. In the past, from time to time, experience has indicated the advisability of legislative changes. Further experience may indicate the advisability of further legislative changes. Much will depend upon the fairness and maturity of those clothed with the exercise of power as bargaining agents. Our task is one of statutory construction, i.e., to ascertain the intent of Congress as presently expressed.

Appellees now contend, and the court below held, that "the agreement proposed on 22 April, 1953, by the Defendant Unions to the Defendant carrier, if consummated, would deprive the plaintiffs, and members of the class whom they represent in this action, of individual property rights of value and liberties protected and guaranteed by and under the Constitution of the United States, the Constitution of the State of North Carolina, and federal and state laws, statutory and common." It is noteworthy that the court below did not indicate any particular provision of the Constitution of the United States it deemed violated.

Had the plaintiffs based their action upon rights arising under the Constitution of the United States, defendant unions were entitled to a removal thereof to the United States District Court for the Eastern District of North Carolina. It was subject to remand only upon the ground that plaintiffs predicated their position solely upon the North Carolina statute. *Allen* v. *Southern Ry Co.*, 114 F. Supp. 72. Since the record is silent as to what occurred in the District Court, we cannot accept as established fact the allegations of defendant unions that, when the amended complaint was before that court, plaintiffs affirmatively disclaimed reliance upon the Constitution and laws of the United States and asserted that they rested their case solely on the North Carolina statute. Even so, plaintiffs' attack upon the constitutionality of the Union Shop Amendment must be limited to the grounds of such attack alleged in their amended complaint.

As set forth in the statement of facts, the only specific constitutional ground on which plaintiffs attacked the Union Shop Amendment is that it unreasonably discriminates as between operating employees and nonoperating employees in violation of the Fifth Amendment. The basis for this position is the provision as to operating employees, 45 U.S.C.A. sec. 152, Eleventh (c), that, in a union shop agreement affecting operating employees, such an employee is exempt from joining the particular union certified as the collective bargaining agent for his craft "if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; and no agreement . . . shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership." The option thus given operating employees, but denied to nonoperating employees, is the basis for the charge of unreasonable discrimination in violation of the Fifth Amendment. As stated by Wenke, J., speaking for the Supreme Court of Nebraska: "Classification of railroad employees into operating and nonoperating groups is traditional on railroads, and certainly is reasonable as a basis of classification for purposes of railroad legislation." We are in accord with the reasoning of the Nebraska court, based upon authorities cited, that the Union Shop Amendment is not subject to successful attack on the ground assigned by plaintiffs herein. *International Assn. of Machinists* v. *Sandsberry, supra; Moore* v. *Chesapeake & Ohio Ry. and Ward* v. *Seaboard Air Line Railroad Company, supra; Hanson* v. *Union Pacific R.R. Co., supra.*

Admittedly, the Union Shop Amendment removes the North Carolina Act as a road block in the path of making a union shop agreement drawn in compliance with its terms. Even so, the Act of Congress does not compel or require a union shop. As pointed out by Judge Learned Hand, it is

"permissive," not "self-operative." On the ground that the first ten amendments to the Constitution of the United States protect against congressional action and are not limitations upon the acts of private parties, *Corrigan* v. *Buckley*, 271 U.S. 323, 46 S. Ct. 521, 70 L. Ed. 969, it has been held, as against challenge on constitutional grounds not alleged herein, that a railroad employee's constitutional rights are not infringed by the Union Shop Amendment. *Otten* v. *Baltimore & O. R. Co., supra; Wicks* v. *Southern Pac. Co.*, 121 F. Supp. 454 (S.D. Calif.). Too, *Senn* v. *Tile Layers Protective Union*, 301 U.S. 468, 57 S. Ct. 857, 81 L. Ed. 1229, is persuasive authority for the view that the Act of Congress authorizing a union shop agreement does not violate the Fifth Amendment. The laws of Wisconsin permitted a union to endeavor to induce an employer, not only to unionize his shop but to refrain from working in his business with his own hands, although none of his employees was a member of the union. Mr. Justice Brandeis says: "Whether it was wise for the State to permit the unions to do so is a question of its public policy—not our concern. The Fourteenth Amendment does not prohibit it."

True, the Nebraska case cited reached the conclusion that the Union Shop Amendment violated the Fifth Amendment. This conclusion was based on the view that the initiation fees, dues and assessments employees may be required to pay under a permitted union shop agreement may be used for purposes such employees do not approve, i.e., the amount thereof is not limited to a proportionate share of the cost of obtaining the benefits they receive from collective bargaining agreements negotiated in their behalf. In this aspect, the Nebraska court regarded the Union Shop Amendment as a denial of due process.

"But we do not wish to express an opinion upon it until the question is brought directly before us," to use the words of Battle, J., in *S.* v. *John*, 30 N.C. 330. In the case before us, the Union Shop Amendment is not challenged as

unconstitutional on that ground. Moreover, there is neither allegation nor evidence that the initiation fees, dues or assessments of any of the defendant union are unreasonable or disproportionate to the amount necessary, in the phrase of Mr. Justice Holmes, "to establish the equality of position between the parties in which liberty of contract begins." Dissenting opinion, *Coppage* v. *Kansas*, 236 U.S. 1, 35 S. Ct. 240, 59 L. Ed. 441, L.R.A. 1915C, 960. Suffice it to say, we will not undertake to determine whether an Act of Congress is invalid because violative of the Constitution of the United States except on a ground definitely drawn into focus by plaintiffs' pleadings.

Various documents, consisting of membership application blanks, constitutions and by-laws, etc., of defendant unions were identified by stipulation. In their brief, plaintiffs assert that employees will be required, on penalty of the loss of their jobs, to subscribe to statements of belief, to take oaths, to make pledges, etc., offensive to them and contrary to their honest convictions; that they will be required to choose between loss of employment by defendant carrier and stultifying themselves by false statements and involuntary commitments; and that this constitutes a denial of their individual liberties and property rights under the Constitution of the United States. Here, again, plaintiffs attempt to proceed on a new course. For the complaint does not allege nor does the evidence show that any of the named plaintiffs made any reference to any of these documents as the basis of his objection to the proposed union shop agreement. Nor does the complaint challenge the constitutionality of the Union Shop Amendment on any ground related to such documents. We defer consideration of such matters until a specific factual situation is presented by allegation and evidence. A union may waive any requirement that is offensive to the scruples of a member or prospective member. Moreover, both under the Union Shop Amendment and the explicit provisions of the proposed union shop agreement, if membership is *denied* or *terminated* for any reason

other than failure to pay or tender the periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership, such denial or termination of membership is not a ground for discharge. In this connection, see *Otten* v. *Baltimore & O. R. Co., supra; Wicks* v. *Southern Pac. Co., supra;* also, the committee reports to the 81st Congress, 2d Session, *supra.*

Beyond question, the right to work is guaranteed to every person. But employment of one person by another is not so guaranteed. In the absence of limitation by legislation, an employee's rights depend upon the terms of his employment contract; and it can be provided that the employee might be discharged for any reason or none. The original concept was such that the Supreme Court of the United States struck down as unconstitutional both federal and state statutes (not the contract provision) which made unlawful a provision in an employment contract by which an employee would be discharged if he joined a union. *Adair* v. *U. S.*, 208 U.S. 161, 28 S. Ct. 277, 52 L. Ed. 436, 13 Ann. Cas. 764; *Coppage* v. *Kansas, supra.* The ground assigned therefor was what the court then considered the constitutional right of liberty of contract both of employer and employee. Under that concept, the parties were considered *free* to negotiate that an employee be discharged for union membership, nonmembership or other ground. Later, this view was rejected, *Lincoln Fed. L. U.* v. *Northwestern I. & M. Co., supra,* and cases cited therein. For it became apparent, as Mr. Justice Holmes had observed, that real liberty of contract exists only when there is substantial equality of position between the parties. Legislation was then recognized as valid which took from no person the right to work but defined limitations within which the right of freedom to contract as to employment might be exercised. As of now, Congress has defined such limitations as to employees of carriers in interstate commerce. Except as defined by Congress within the orbit of its author-

ity, the North Carolina statute controls. To the extent they are in irreconcilable conflict, the Act of Congress prevails. The wisdom of the legislation, either of Congress or of the General Assembly, is not our concern.

A well established rule of this Court is that injunctive relief will be granted only when irreparable injury is both *real* and *immediate*. *Wilcher* v. *Sharpe*, 236 N.C. 308, 72 S.E. 2d 662, and cases cited.

Defendant carrier has signed no union shop agreement. It has manifested no desire or intent to do so. If it should sign such agreement, the nonmember plaintiffs and other nonmembers would have sixty (60) days within which to bring suit to restrain the enforcement thereof. If defendant carrier refuses or fails to sign such agreement, no strike can be called unless and until at least a majority of union members of each respective craft vote therefor. If the opposition to the union shop principle is as strong as plaintiffs contend, it would appear likely that in some, if not all, of the crafts represented by defendant unions, the majority vote of the union members of defendant carrier would ban the calling of a strike for a union shop agreement. In any event, it would seem that plaintiffs are somewhat removed from real and immediate irreparable injury; and that, if the apprehended events occur, they would have ample time to invoke the injunction procedures of the court.

Attention is called to the fact that had defendant carrier entered into a union shop agreement with defendant unions, such as that proposed, and if the action were one to restrain the discharge of plaintiffs, there is strong authority that the validity and interpretation of the union shop agreement would be matters for determination in the first instance by the National Railroad Adjustment Board before resort to the courts. *Alabaugh* v. *Baltimore and Ohio Railroad Company*, 222 F. 2d 861 (C.C.A. 4th), in which Parker, Chief Judge, reviews the cases dealing with this subject.

Do those plaintiffs who are presently members of a de-

fendant union have such interest as to entitle them to attack the attempted negotiation of a union shop agreement? Are the eight defendant unions in which none of the named plaintiffs is either a member or eligible for membership entitled to a dismissal of the action on the ground that a plaintiff may not sue on behalf of a class to which he does not belong? Since they do not go to the entire case, we refrain from discussing these serious questions.

Conceding that there are strong reasons why the judgment might be vacated on procedural grounds, i.e., a failure of plaintiffs to show real and immediate irreparable injury, we have decided to deal with the basic questions here presented; for the matter is one of public importance and both defendant carrier and defendant unions would seem entitled to know whether, under the pleadings and evidence herein, the making of a union shop agreement, in compliance with the provisions of the Union Shop Amendment, would be deemed by this Court invalid and a criminal offense under the North Carolina statute.

For the reasons stated, the judgment of the court below is reversed and the restraining order is dissolved.

Reversed.

Barnhill, C.J., took no part in the consideration or decision of this case. Parker, J., dissents.

## APPENDIX B

## JUDGMENT

## SUPREME COURT OF NORTH CAROLINA

## FALL TERM, 1955

EDWIN COURTNEY HUDSON, LUTHER JEFFERSON DEVANE, WILLIAM RUSH CHISHOLM, JOE MARION TILLEY, HERBERT LEWIS DARDEN, THOMAS ALFRED SHEPARD, JR., IRVIN ELDRIDGE RACKLEY, JOHN HUBERT SHANNON, CLARK WELDON POISSON, JOHN MONROE BINKLEY, FOR AND ON BEHALF OF THEMSELVES AND ALL OTHER EMPLOYEES OF ATLANTIC COAST LINE RAILROAD COMPANY IN NORTH CAROLINA WITH A COMMON OR GENERAL INTEREST,

v.

ATLANTIC COAST LINE RAILROAD COMPANY, INTERNATIONAL ASSOCIATION OF MACHINISTS, INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS & HELPERS OF AMERICA, INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELPERS, SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, BROTHERHOOD of RAILWAY CARMEN OF AMERICA, INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, ORDER OF RAILROAD TELEGRAPHERS, BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AMERICAN TRAIN DISPATCHERS ASSOCIATION.

**No. 170 — New Hanover County**

This cause came on to be argued upon the transcript of the record from the Superior Court of New Hanover County: Upon consideration whereof, this Court is of opin-

ion that there is error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable William H. Bobbitt, Justice, be certified to the said Superior Court, to the intent that the JUDGMENT IS REVERSED. And it is considered and adjudged further, that the plaintiffs and surety to the Prosecution Bond, Herbert Lewis Darden and defendant, Atlantic Coast Line Railroad Company, do pay the costs of the appeal in this Court incurred, to wit, the sum of *One Hundred Thirty-four and 25/100 Dollars* ($134.25) and execution issue therefor.

ADRIAN J. NEWTON,
*Clerk of the Supreme Court.*

## APPENDIX C

### CONSTITUTION OF THE UNITED STATES,

Article I, Section 8, Clause 3:

"The Congress shall have power * * * to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

Amendment 1:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment 5:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

**RAILWAY LABOR ACT** (Act of June 21, 1934, c. 691, 48 Stat. 1186, et seq.; Act of Jan. 10, 1951, c. 1220, 64 Stat. 1238; 45 U.S.C., Sec. 152):

Section 2, Fourth:

"Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds

of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization."

Section 2, Fifth:

"Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way."

* * * * *

Section 2, Eleventh:

"Eleventh. Nothwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

"(a) To make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*,

That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) To make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First Division of paragraph (h) of section 153 of this title, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided*,

*however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

"(d) Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended."

**1947 SESSION LAWS OF NORTH CAROLINA,** Chapter 328 (General Statutes 95-78 to 84, inclusive):

"SECTION 1. The right to live includes the right to work. The exercise of the right to work must be protected and maintained free from undue restraints and coercion. It is hereby declared to be the public policy of North Carolina that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization or association.

"SEC. 2. Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against the public policy and an illegal combination or conspiracy in restraint of trade or commerce in the State of North Carolina.

"SEC. 3. No person shall be required by an employer to become or remain a member of any labor union or

labor organization as a condition of employment or continuation of employment by such employer.

"SEC. 4. No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

"SEC. 5. No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees, or other charges of any kind to any labor union or labor organization.

"SEC. 6. Any person who may be denied employment or be deprived of continuation of his employment in violation of Sections 3, 4 and 5 or of one or more of such Sections, shall be entitled to recover from such employer and from any other person, firm, corporation, or association acting in concert with him by appropriate action in the courts of this State such damages as he may have sustained by reason of such denial or deprivation of employment.

"SEC. 7. The provisions of this Act shall not apply to any lawful contract in force on the effective date hereof but they shall apply in all respects to contracts entered into thereafter and to any renewal or extension of any existing contract.

"SEC. 8. If any clause, sentence, paragraph or part of this Act or the application thereof to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Act, and the application thereof to other person or circumstances, but shall be confined to the part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstance involved.

"SEC. 9. All laws and clauses of laws in conflict with this Act are hereby repealed."

No. ~~605~~ 170 ~~EIGHTH~~ Fifth DISTRICT

SUPREME COURT OF NORTH CAROLINA

~~Spring~~ Fall Term, 1955

EDWIN COURTNEY HUDSON; LUTHER JEFFERSON DeVANE; WILLIAM RUSH CHISHOLM; JOE MARION TILLEY; HERBERT LEWIS DARDEN; THOMAS ALFRED SHEPARD, JR.; IRVIN ELDRIDGE RACKLEY; JOHN HUBERT SHANNON; CLARK WELDON POISSON; JOHN MONROE BINKLEY; FOR AND ON BEHALF OF THEMSELVES AND ALL OTHER EMPLOYEES OF ATLANTIC COAST LINE RAILROAD COMPANY IN NORTH CAROLINA WITH A COMMON OR GENERAL INTEREST,

v.

ATLANTIC COAST LINE RAILROAD COMPANY; INTERNATIONAL ASSOCIATION OF MACHINISTS; INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS & HELPERS OF AMERICA; INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELPERS; SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; BROTHERHOOD OF RAILWAY CARMEN OF AMERICA; INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELPERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS; BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES; BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES;

From New Hanover

THE ORDER OF RAILROAD TELEGRAPHERS; BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA; HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION; AMERICAN TRAIN DISPATCHERS ASSOCIATION.

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|---|---|
| H. L. Darden: | 17 November 1937 |
| I. E. Rackley: | 28 November 1939 |
| J. H. Shannon: | 17 March 1941 |
| C. W. Poisson: | 15 September 1950 |

2. This action is brought for and on behalf of the named plaintiffs individually as well as in a representative capacity on behalf of each and all other persons of a multitudinous class to which they belong and which is similarly situated. Said class consists of more than 1,300 fellow employees of the Atlantic Coast Line, citizens and residents of North Carolina, who have signed petitions as follows:

OPPOSITION TO UNION SHOP

Petition

of the employees of the Atlantic Coast Line Railroad Company.

My signature below signifies that I am opposed to the principle of the Union Shop, for the following reasons:

1. I believe it infringes upon my inherent Constitutional rights as a free American, by compelling me to pay a toll for the right to work;

2. I believe it is not consistent with good unionism, which was built on a voluntary basis;

3. I believe the Union Shop, like the outlawed Closed Shop, is just another form of economic slavery.

I UNDERSTAND THIS IS NOT A MOVE AGAINST ORGANIZED LABOR.

Each member of the class has thereby demonstrated that he has a common or general interest in

this action, as hereinafter detailed. The number of persons who have a common or general interest in the questions involved in this action is so great as to make it impractical, difficult, or impossible to bring them all before the Court in a joint complaint. The named plaintiffs, having the same interests as each member of the class, fairly represent the class in the prosecution of the action.

3. The defendant Atlantic Coast Line Railroad is a corporation with its principal office and place of business in the City of Wilmington, North Carolina. Upon information and belief, the plaintiffs allege that in order to perform the normal operations of its business, this defendant employs in the State of North Carolina a large number of persons, including each of the plaintiffs named herein, and the others similarly situated whom the plaintiffs fairly represent. Upon information and belief, the plaintiffs allege that this defendant employs at its shops, offices, and places of business in North Carolina, among others, those classification of workers as follows: machinists, boilermakers, ship builders and helpers, blacksmiths, drop forgers and helpers, sheet metal workers, electrical workers, railway carmen, firemen, oilers, roundhouse and shop laborers, clerks, freight handlers, express and station employees, maintenance of way employees, telegraphers, signalmen, restaurant employees, and train dispatchers.

4. Upon information and belief, the plaintiffs allege that the defendants International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Blacksmiths, Drop Forgers and Helpers; Sheet Metal Workers International Association; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America; International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers; Brotherhood of Railway and Steamship Clerks,

Freight Handlers, Express and Station Employees; Brotherhood of Maintenance of Way Employees; The Order of Railroad Telegraphers; Brotherhood of Railroad Signalmen of America; Hotel and Restaurant Employees and Bartenders International Union; American Train Dispatchers Association, are each an unincorporated labor association or organization, known in labor parlance as craft unions, and composed respectively of machinists; boilermakers; shipbuilders and helpers; blacksmiths, drop forgers and helpers; sheet metal workers; electrical workers; railway carmen; firemen, oilers, helpers, roundhouse and shop laborers; clerks, freight handlers, express and station employees; maintenance of way employees; telegraphers; signalmen; restaurant employees; train dispatchers; and others, all of whom are employees of the defendant Atlantic Coast Line. Upon information and belief, the plaintiffs allege that these defendant labor organizations do business in the County of New Hanover, State of North Carolina, by performing the acts and purposes for which they were formed, as, for example: organizing and associating together some of the employees of the defendant Atlantic Coast Line, who perform work in the classification of their respective crafts; accepting into their membership those employees of the defendant Atlantic Coast Line who belong to their respective crafts and who desire to become members of the respective craft unions; negotiating agreements on behalf of the respective crafts concerning rates of pay, rules, and working conditions; and participating in efforts to settle all disputes on behalf of the employees in their respective crafts. Upon information and belief the plaintiffs allege that said unincorporated labor associations or organizations, although residents of the County of New Hanover, and doing business in the State of North Carolina by the performance of the acts hereinbefore and hereinafter set forth, have failed to appoint an agent in this state upon whom its processes and precepts may be

served, and have failed to certify to the Clerk of the Superior Court of New Hanover County the names and addresses of their process agents, all as required by the provisions of Chapter 478, Public Laws of North Carolina, 1943; General Statutes 1-97.

5. The labor organizations described in the preceding paragraph, each being a craft union, together are known as the non-operating unions of the defendant Atlantic Coast Line. The named plaintiffs herein, and their fellow employees of a class whom they represent and who are similarly situated, are either regular members of one or the other of the defendant labor organizations or are eligible for membership therein, and will be covered and bound by the terms of any agreement entered into between the aforesaid defendant labor organizations and the defendant Atlantic Coast Line. Specifically, the plaintiff Hudson is a member of the defendant American Dispatchers Association; the plaintiff Binkley is a member of the defendant Brotherhood of Railway Carmen of America; the plaintiff Rackley is a member of the defendant Order of Railroad Telegraphers; the plaintiff DeVane is a member of the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; the plaintiffs Tilley, Shepard, Chisholm, Darden and Shannon are each eligible for membership in the last mentioned union; and the plaintiff Poisson is eligible for membership in the defendant Brotherhood of Maintenance of Way Employees.

6. The plaintiffs are advised and believe, and therefore allege, that the defendant labor organizations have made a joint written proposal or demand upon the defendant Atlantic Coast Line for a union shop agreement, including a provision for the checkoff of union dues; that the aforesaid union shop agreement requires these plaintiffs, and the thousands of their fellow employees of the defendant Atlantic Coast Line, who are similarly situated,

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as a condition of continued employment with their employer, to become members of that defendant labor organization which represents their craft or class, within sixty days following the effective date of such agreement; and that all persons who are subsequently employed by the defendant Atlantic Coast Line for jobs covered by the craft or class represented by the defendant labor organizations shall be required, as a condition of employment, to become members of one of the defendant labor organizations within sixty days following the beginning of such employment. The plaintiffs are advised and believe, and therefore allege, that by reason of the aforesaid demands or proposals made upon the defendant Atlantic Coast Line by the defendant labor organizations, negotiations for an agreement containing such a union shop were undertaken between representatives of the defendants in the City of Wilmington, North Carolina, on 22 April, 1953, and are continuing to the time of the commencement of this action. The plaintiffs are advised and believe, and therefore allege, that in the course of these negotiations and discussions, the defendant labor organizations are demanding that the defendant Atlantic Coast Line enter into an agreement for a union shop; that in such negotiations and demands the defendant labor organizations claim to represent all of the non-operating employees of the defendant Atlantic Coast Line, whether members of a union or not, and without regard to the fact that they have signed the petition referred to in paragraph 2 of this Complaint, and including all of the named plaintiffs; and that it is the purpose and intent of said defendant labor organizations to require the defendant Atlantic Coast Line to enter into agreements with them in an effort to obligate all such employees of the defendant Atlantic Coast Line, including the plaintiffs herein, to become and remain members of the labor organization which represents their craft or class as a condition of continued employment

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with their employer. The plaintiffs are advised and believe, and therefore allege, that representatives of the defendant labor organizations have made it known that a failure of the defendant Atlantic Coast Line to accede to their demands for a union shop agreement would likely cause a strike or stoppage of work, and that the defendant labor organizations during these negotiations have brought great pressure to bear upon the defendant Atlantic Coast Line to accede to their demands for a union ship agreement by the aforesaid means and others.

7. The plaintiffs are advised and believe, and therefcre allege, that the great majority of all the employees of the defendant Atlantic Coast Line, who are members of a class or craft represented by the defendant labor organizations, including members of said unions, are strongly opposed to the principles of a union shop agreement but have had no opportunity to vote on the question or participate in the negotiations with their employer, defendant Atlantic Coast Line, nor will such an opportunity be afforded. On the contrary, these plaintiffs allege that more than 1,300 of their fellow employees have positively and unequivocally made known their strong opposition to the union shop by the execution of petitions in the manner and form as set forth in paragraph 2 of this Complaint, and that their desires and wishes in this respect have been made known to the defendant Atlantic Coast Line.

8. The plaintiffs allege that each of them, and all other employees of the defendant Atlantic Coast Line similarly situated and whom they represent in this action, have the right to work free from restraints and coercion which would be imposed upon them if the union shop agreement were entered into between the defendants. The General Assembly of the State of North Carolina has declared it "to be the public policy of North Carolina that the right of persons to work shall not be denied or abridged on account of membership or non-membership in

any labor union or labor organization or association." The General Assembly has further provided by Chapter 328 of the Sessions Laws of 1947, General Statutes 95-78, et seq., that any agreement between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for such employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, is declared to be against the public policy of the state. By the aforesaid legislative enactment these plaintiffs, and the other employees of the defendant Atlantic Coast Line, who are similarly situated, are guaranteed that they shall not be required by their employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer, and the employer is proscribed from requiring them, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization.

9. The defendant labor organizations have exceeded, and will continue to exceed unless restrained, their proper authority as bargaining representatives of the members of their respective crafts, including the named plaintiffs and their fellow employees of the same class, by their demands upon the defendant Atlantic Coast Line for a union shop agreement. The defendant labor organizations, by their demands for and insistence upon a union shop agreement, which is invalid and unlawful under the laws of the State of North Carolina, and which is contrary to the interests of all their members and hostile to the expressed wishes and interests of a large number of employees whom they profess to represent, have exceeded their authority as bargaining representatives.

10. The plaintiffs are advised and believe, and therefore allege, that during the past

several months the defendant labor organizations, or their sister unions, have been successful in persuading other employers to enter into union shop agreements covering their respective class or crafts, both within this state and in other states, that these defendants possess such power, strength, and wealth that they can and do exert strong economic pressure upon employers to the end that they accede to their demands for a union shop; and that if the defendant Atlantic Coast Line fails or refuses to accede to their demands for a union shop agreement covering the employees in their respective class or craft, they will invoke a strike or stoppage of work. The aforesaid past actions and contemplated future actions on the part of the defendant unions constitute a serious threat to the individual property rights and liberties of these plaintiffs, and those of each member of their class, and violate the rights protected to them under the North Carolina Right-to-Work Act and the Constitution of North Carolina.

11. The plaintiffs are advised and believe, and therefore allege, that a meeting between the defendant Atlantic Coast Line and the defendant labor organizations has been set for Thursday, 23 April, 1953, at which time the defendant labor organizations will insist that their demands for a union shop agreement be met, and that they will continue to insist upon the consummation of such an agreement to the peril, if necessary, of calling a strike or work stoppage in order to enforce their unlawful demands. Unless all of the defendants are immediately restrained and enjoined from entering into and consummating a union shop agreement these plaintiffs, and the other employees similarly situated, cannot be adequately protected from the effects of such a contract or agreement which is declared unlawful and contrary to the public policy of this state. The consummation of such an unlawful and illegal agreement or contract as demanded by the de-

fendant labor organizations would cause these plaintiffs, and other employees similarly situated, to suffer serious and irreparable damage and injury, including the loss of their right to earn a livelihood free of the necessity of joining a union or labor organization, the loss of wages if a strike or work stoppage is called, and the loss of seniority and other rights, privileges and benefits accrued to them by reason of their long employment with the defendant Atlantic Coast Line. Unless the defendants are restrained and enjoined fron consummating the proposed union shop agreement, these plaintiffs and more than one thousand other employees similarly situated, who desire to continue their employment with and for the defendant Atlantic Coast Line, without the necessity of becoming or remaining a member of one of the defendant labor organizations, will be unable to do so and will be deprived of their lawful right to retain their jobs and to earn a livelihood. The plaintiffs, and all others who would be wrongfully injured by the consummation of said unlawful and illegal contract, would have no adequate remedy at law and the only remedy which would afford them adequate and proper relief is the injunctive process of this Court.

12. The plaintiffs do not seek by this action to restrain or enjoin the defendants from negotiating the terms or rates of play, rules, working conditions or any other matters which are not prohibited by law, or from consummating an agreement upon any or all of such provisions if agreement is reached; but, on the contrary, the plaintiffs by this action seek only to restrain each and all of the defendants from entering into a union shop agreement, which as hereinbefore alleged, constitutes a violation of the laws of the State of North Carolina, and exceeds the authority of the bargaining representatives.

WHEREFORE, the plaintiffs pray:

1. That this Complaint be treated as an affidavit of the facts herein set out;

2. That until the final hearing of this action a temporary restraining order be issued restraining and enjoining the defendants and each of them, their officers, agents, servants, employees and attorneys, and those in active concert or participation with them:

(a) From negotiating for, demanding, consummating, entering into or executing any agreement or contract calling for a union shop or similar arrangement whereby membership in a labor organization is made a condition of continued employment or of employment;

(b) From inducing, encouraging, aiding, ordering, or causing employees of the defendant Atlantic Coast Line to engage in a slowdown, work stoppage, or strike as a means of forcing that defendant to consummate any such agreement;

(c) From ordering a lockout of the employees as a means of forcing the parties to sign any such agreement;

(d) From aiding or procuring or causing to be done any act which they or any of them may be enjoined or restrained from doing;

3. That the Court grant such other and further relief as the plaintiffs may be entitled to, and that upon a final hearing said injunction may be made permanent, and the plaintiffs may have at that time such other and further relief as they may be entitled to; and

4. That notice and order issue forthwith to each of the defendants named herein and to all other persons who may be participating in said acts complained of, and to whom this action may become known, to appear before this Court and show cause, if any they may have, why they should not be permanently enjoined and re-

strained from the commission of said acts.

/s/ ROYCE S. McCLELLAND
4 I.O.O.F. Building
Wilmington, North Carolina.

/s/ THORNTON H. BROOKS
BROOKS, McLENDON, BRIM & HOLDERNESS
214 Southeastern Building
Greensboro, North Carolina
Attorneys for Plaintiffs.

(Verified)

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TEMPORARY RESTRAINING ORDER

This cause coming on to be heard before the undersigned, Q. K. Nimocks, Jr., Superior Court, Judge, Presiding, Civil Term, April 1953, New Hanover County, in Court in Wilmington, North Carolina, upon the verified Application of the Plaintiffs for a Temporary Restraining Order, and upon the verified Complaint filed by the plaintiffs in this cause, treated as an affidavit; and it appearing to the Court that action has been commenced by the plaintiffs in the Superior Court of New Hanover County against the defendants above named, and that Summons has been issued in said action against said defendants, in which action the plaintiffs seek an Injunction against certain acts of the defendants and others therein complained of;

And upon a consideration of said Application and said verified Complaint treated as an affidavit, it appearing to the Court that the defendants named herein are negotiating upon the demands of the defendant labor organizations for a union shop agreement and are likely to consummate such an agreement unless restrained by the Court, and being of the opinion that a Temporary Restraining Order should be issued in order to protect the named plaintiffs, and their fellow employees of a class similarly situated, from threatened irreparable harm and injury to their rights and liberties, pending a determination on the merits of the issues in

this action; it is now, therefore,

ORDERED, ADJUDGED AND DECREED that the named defendants, and each of them, their officers, agents, servants, employees and attorneys, and those in active concert or participation with them, and all other persons to whom notice and knowledge of this Order may come, are, until the merits of this cause are determined, and until this Court orders otherwise, hereby enjoined and restrained as follows:

1. From negotiating for, demanding, consummating, entering into or executing any agreement or contract calling for a union shop or similar arrangement whereby membership in a labor organization is made a condition of continued employment for the named plaintiffs and for their fellow employees of a class similarly situated;

2. From inducing, encouraging, aiding, ordering, or causing employees of the defendant Atlantic Coast Line to engage in a slow-down, work stoppage or strike as a means of forcing the consummation of any such agreement;

3. From ordering or causing a lockout of the employees of the defendant Atlantic Coast Line, as a means of forcing the consummation of any such agreement; and

4. From aiding or procuring or causing to be done any of the foregoing acts which they or any of them have been enjoined or restrained from doing.

This Order shall become effective upon the plaintiffs filing with the Clerk of the Superior Court of New Hanover County a written undertaking with sufficient sureties justified before and approved by said Clerk in the amount of two hundred dollars, guaranteeing to the amount specified that the plaintiffs will pay to the defendants such damages as the defendants may sustain by the issuance of this Order, in the event it may be finally determined by

the Court that the plaintiffs were not entitled thereto. It is further

ORDERED that the defendants, and each of them, appear before Judge John J. Burney of the Superior Court of North Carolina at the Court House in Wilmington, North Carolina, on May 8, 1953, at 10:00 A.M., or as soon thereafter as they may be heard, then and there to show cause, if any they may have, why this Order should not be continued to the trial of this action on its merits.

This the 23 day of April, 1953.

Q. K. NIMOCKS, JR., Judge.

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

TO THE SHERIFF OF NEW HANOVER COUNTY -- GREETINGS:

It appearing to the undersigned Clerk of the Superior Court of New Hanover County that the foregoing Order was duly executed by Honorable Q. K. Nimocks, Jr., Judge Presiding, and that the plaintiffs have duly filed in this Court a written undertaking in the amount set forth above and said bond or undertaking has been approved by me, you are hereby ordered and directed to serve upon each of the defendants named in said Order a copy of the Order and of this precept.

Hereof fail not and of this Order make due return.

Given under my hand and seal of said Court, this the 23 day of April, 1953.

FOSTER EDWARDS (SEAL)
Clerk of Superior Court
New Hanover County.

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ORDER CONTINUING TEMPORARY RESTRAINING ORDER

It appearing to the Court that his Honor Q. K. Nimocks, Jr., Judge Holding the Courts of the Eighth Judicial District, on April 23, 1953, entered in the above entitled cause a temporary restraining order and set the same

for hearing before the undersigned Resident Judge of the Eighth Judicial District, for hearing at the Court House in Wilmington, North Carolina, on May 8, 1953, at 10 o'clock A.M., requiring the defendants to then appear and show cause, if any, why said temporary restraining order should not be continued until the final hearing; and

That the undersigned did not know of the setting of said cause, and upon learning of same finds that he is unable to hear this cause on the 8th day of May, 1953, as he will not then be in the Eighth Judicial District, and that the said undersigned will be from May 11, to May 23, holding a two-weeks Civil Term of Court in the Superior Court of Wake County, North Carolina.

IT IS, THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that the hearing set for May 8, 1953, be continued, and this cause is re-assigned to his Honor Q. K. Nimocks, Jr., Judge Holding the Courts of the Eighth Judicial District, in order that he may set a time and place for the hearing upon the temporary restraining order entered in this cause.

Done at Wilmington, North Carolina, this 5th day of May, 1953.

JOHN J. BURNEY
Resident Judge of the
Eighth Judicial District.

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AMENDED COMPLAINT

The plaintiffs, prior to the expiration of the period for the defendants to answer the original complaint (the period having been extended by the pendency of the Motions to Remand in the United States District Court), amend their complaint heretofore filed in this action on 23 April, 1953, by striking out each paragraph thereof and inserting in lieu thereof the following allegations against the defendants as an Amended Complaint:

1. The named plaintiffs are each citizens and residents of the County of New Hanover, State of North Carolina. They are each regular, permanent employees of the defendant Atlantic Coast Line Railroad Company (herein referred to as Atlantic Coast Line). Their accumulated seniority with Atlantic Coast Line and the dates of their initial employment are:

| | |
|---|---|
| E. C. Hudson | 10 May 1908 |
| L. J. DeVane: | 15 November 1914 |
| W. R. Chisholm: | 18 January 1917 |
| J. M. Tilley: | 19 October 1925 |
| T. A. Shepard, Jr.: | 2 October 1935 |
| J. M. Brinkley: | 4 December 1936 |
| H. L. Darden: | 17 November 1937 |
| I. E. Rackley: | 28 November 1939 |
| J. H. Shannon: | 17 March 1941 |
| C. W. Poisson: | 15 September 1950 |

2. This action is brought for and on behalf of the named plaintiffs individually as well as in a representative capacity on behalf of each and all other persons of a multitudinous class to which they belong and which is similarly situated. Said class consists of more than 1,580 fellow employees of the Atlantic Coast Line who have signed petitions as follows:

OPPOSITION TO UNION SHOP

Petition

of the employees of the Atlantic Coast Line Railroad Company.

My signature below signifies that I am opposed to the principle of the Union Shop, for the following reasons:

1. I believe it infringes upon my inherent Constitutional rights as a free American, by compelling me to pay a toll for the right to work;

2. I believe it is not consistent with good

unionism, which was built on a voluntary basis;

3. I believe the Union Shop, like the outlawed Closed Shop, is just another form of economic slavery.

I understand that my signature does not obligate me financially.

I UNDERSTAND THIS IS NOT A MOVE AGAINST ORGANIZED LABOR.

and of hundreds of other employees who have expressed agreement with said petitions but who preferred not to sign same. Each member of the class has thereby demonstrated that he has a common or general interest in this action, as hereinafter detailed. The number of persons who have a common or general interest in the questions involved in this action is so great as to make it impractical, difficult, or impossible to bring them all before the Court in a joint Complaint. The named plaintiffs, having the same interests as each member of the class, fairly represent the class in the prosecution of this action.

3. The plaintiffs are advised and believe, and therefore allege, that the defendant Atlantic Coast Line Railroad is a corporation with its principal office and place of business in the City of Wilmington, North Carolina, and operates its business as a common carrier on an extensive basis within this State. That in order to perform the normal operations of its business, this defendant employs in the State of North Carolina a large number of persons, including each of the plaintiffs named herein, and others similarly situated whom the plaintiffs fairly represent. Upon information and belief, the plaintiffs allege that this defendant employs at its shops, offices, and places of business in North Carolina, among others, classifications of workers as follows: machinists, boilermakers, ship builders and helpers,

blacksmiths, drop forgers and helpers, sheet metal workers, electrical workers, railway carmen, fireman, oilers, roundhouse and shop laborers, clerks, freight handlers, express and station employees, maintenance of way employees, telegraphers, signalmen, restaurant employees, and train dispatchers.

4. Upon information and belief, the plaintiffs allege that the defendants International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Blacksmiths, Drop Forgers and Helpers; Sheet Metal Workers International Association; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America; International Brotherhood of Firemen, Oilers Helpers, Roundhouse and Railway Shop Laborers; Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of Maintenance of Way Employees; The Order of Railroad Telegraphers; Brotherhood of Railroad Signalmen of America; Hotel and Restaurant Employees and Bartenders International Union; American Train Dispatchers Association, are each an unincorporated labor association or organization, known in labor parlance as craft unions, and composed respectively of machinists; boilermakers; ship builders and helpers; blacksmiths, drop forgers and helpers; sheet metal workers; electrical workers; railway carmen; firemen, oilers, helpers, roundhouse and shop laborers; clerks, freight handlers, express and station employees; maintenance of way employees; telegraphers; signalmen; restaurant employees; train dispatchers; and others, all of whom are employees of the defendant Atlantic Coast Line. Upon information and belief, the plaintiffs allege that these defendant labor organizations do business in the County of New Hanover, State of North Carolina, by performing the acts and purposes for which they were formed, as, for example: organizing and associating together some of the

employees of the defendant Atlantic Coast Line, who perform work in the classification of their respective crafts; accepting into their membership those employees of the defendant Atlantic Coast Line, who belong to their respective crafts and who desire to become members of the respective craft unions; negotiating agreements on behalf of the respective crafts concerning rates of pay, rules, and working conditions; and participating in efforts to settle all disputes on behalf of the employees in their respective crafts. Upon information and belief, the plaintiffs allege that said unincorporated labor associations or organizations, although residents of the County of New Hanover, and doing business in the State of North Carolina by the performance of the acts hereinbefore and hereinafter set forth, have failed to appoint an agent in this state upon whom its processes and precepts may be served, and have failed to certify to the Clerk of the Superior Court of New Hanover County the names and addresses of their process agents, all as required by the provisions of Chapter 478, Public Laws of North Carolina, 1943; General Statutes 1-97.

5. The labor organizations described in the preceding paragraph, each being a craft union, together are known as the non-operating unions of the defendant Atlantic Coast Line. The named plaintiffs herein, and their fellow employees of a class whom they represent and who are similarly situated, are either regular members of one or the other of the defendant labor organizations or are eligible for membership therein, and will be covered and bound by the terms of any agreement entered into between the aforesaid defendant labor organizations and the defendant Atlantic Coast Line. Specifically, the plaintiff Hudson is a member of the defendant American Train Dispatchers Association; the plaintiff Binkley is a member of the defendant Brotherhood of Railway Carmen of America; the plaintiff Rackley is a member of

the defendant Order of Railroad Telegraphers; the plaintiff DeVane is a member of the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; the plaintiffs Tilley, Shepard, Chisholm, Darden and Shannon are each eligible for membership in the last mentioned union; and the plaintiff Poisson is eligible for membership in the defendant Brotherhood of Maintenance of Way Employees.

6. The plaintiffs are advised and believe, and therefore allege, that the defendant labor organizations have made a joint written proposal or demand upon the defendant Atlantic Coast Line for a union shop agreement, including a provision for the checkoff of union dues; that the aforesaid union shop agreement requires these plaintiffs, and the thousands of their fellow employees of the defendant Atlantic Coast Line, who are similarly situated, as a condition of continued employment with their employer, to become members of that defendant labor organization which represents their craft or class, within sixty days following the effective date of such agreement; and requires that all persons who are subsequently employed by the defendant Atlantic Coast Line for jobs covered by the craft or class represented by the defendant labor organizations shall be required, as a condition of employment, to become members of one of the defendant labor organizations within sixty days following the beginning of such employment. The plaintiffs are advised and believe, and therefore allege, that by reasons of the aforesaid demands or proposals made upon the defendant Atlantic Coast Line by the defendant labor organizations, negotiations for an agreement containing such a union shop were undertaken between representatives of the defendants in the City of Wilmington, North Carolina, on 22 April, 1953, and continued to the time of the commencement of this action. The plaintiffs are advised and believe, and therefore allege, that

in the course of these negotiations and discussions, the defendant labor organizations are demanding that the defendant Atlantic Coast Line enter into an agreement for a union shop; that in such negotiations and demands the defendant labor organizations claim to represent all of the non-operating employees of the defendant Atlantic Coast Line, whether members of a union or not, and without regard to the fact that they have signed the petition referred to in paragraph 2 of this complaint, and including all of the named plaintiffs; and that it is the purpose and intent of said defendant labor organizations to require the defendant Atlantic Coast Line to enter into agreements with them in an effort to obligate all such employees of the defendant Atlantic Coast Line, including the plaintiffs herein, to become and remain members of the labor organization which represents their craft or class as a condition of continued employment with their employer. The plaintiffs are advised and believe, and therefore allege, that representatives of the defendant labor organizations have made it known that a failure of the defendant Atlantic Coast Line to accede to their demands for a union shop agreement would likely cause a strike or stoppage of work, and that the defendant labor organizations before and during these negotiations have brought great pressure to bear upon the defendant Atlantic Coast Line to accede to their demands for a union shop agreement by the aforesaid means and others.

7. The plaintiffs are advised and believe, and therefore allege, that the great majority of all the employees of the defendant Atlantic Coast Line, who are members of a class or craft represented by the defendant labor organizations, including members of said unions, are strongly opposed to the principles of a union shop agreement but have had no opportunity to vote on the question, have not been furnished with a copy of the demands allegedly made on their behalf, have not participated in the

negotiations with their employer, defendant Atlantic Coast Line, nor will such an opportunity be afforded. On the contrary, these plaintiffs allege that more than 1,580 of their fellow employees have positively and unequivocally made known their strong opposition to the union shop by the execution of petitions in the manner and form as set forth in paragraph 2 of this complaint, and that their desires and wishes in this respect have been made known to the defendant Atlantic Coast Line and many hundreds of other employees have expressed their opposition to a union shop agreement. A majority of the employees of the defendant Atlantic Coast Line, who are members of, or eligible for membership in, the defendant American Train Dispatchers Association, have requested it in writing to cease any negotiations with the carrier for a union shop agreement.

8. The plaintiffs allege that each of them, and all other employees of the defendant Atlantic Coast Line similarly situated and whom they represent in this action, have the right to work free from restraints and coercion which would be imposed upon them if the union shop agreement were entered into between the defendants. The General Assembly of the State of North Carolina has declared it "to be the public policy of North Carolina that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization or association." The General Assembly has further provided by Chapter 328 of the Sessions Laws of 1947, General Statutes 95-78, et seq., that any agreement between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for such employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, is declared to be against the public policy of the state. By the

aforesaid legislative enactment these plaintiffs, and the other employees of the defendant Atlantic Coast Line, who are similarly situated, are guaranteed that they shall not be required by their employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer, and the employer is proscribed from requiring them, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization.

9. The defendant Atlantic Coast Line has, for a number of years, recognized and extended to its employees, including the named plaintiffs, retirement and pension rights, vacation and holiday rights, seniority rights, and other rights of value to the plaintiffs and the employees; and many of its employees, including these plaintiffs, accepted employment, and have continued in their employment with, the defendant Atlantic Coast Line, upon the offer and inducement that these rights would be protected so long as the employees voluntarily performed their services and jobs in a manner satisfactory to their employer. The plaintiffs, and other members of their class, by reason of their continued service for the defendant Atlantic Coast Line, have acquired seniority rights, retirement and pension rights, vacation rights, and other rights of value, which under the terms of a union shop agreement they will be deprived of by their employer unless they join one of the defendant labor organizations within the times prescribed, and notwithstanding that such membership is not voluntary and is against their desires.

10. The plaintiffs are advised and believe, and therefore allege, that the past actions and contemplated future actions in the negotiations referred to constitute a serious threat to their

individual property rights and liberties protected and guaranteed by and under the Constitution of the United States, the Constitution of the State of North Carolina, and Federal and State laws and statutes.

11. The plaintiffs are advised and believe, and therefore allege, that the making of the union shop agreement demanded between the defendant Atlantic Coast Line Railroad and the defendant labor organizations would be in violation of the State and Federal Constitutions, laws and statutes, and unconstitutional and illegal, and further allege that such action would cause them to suffer serious and irreparable damage and injury, for which there could be no adequate remedy at law and the only remedy which would afford them adequate and proper relief is the injunctive process of this court.

12. The plaintiffs are advised and believe, and therefore allege, that in addition to the non-operating unions referred to in paragraph 5, and constituting the defendant labor organizations herein, the defendant Atlantic Coast Line also deals and contracts with, and operates under collective bargaining agreements with, a number of organizations representing its "operating employees," as for example, engineers, conductors, etc.; that those labor organizations representing the operating employees of the defendant Atlantic Coast Line are not demanding that it enter into a Union Shop agreement requiring that all employees who are eligible for membership in their respective labor organizations shall, as a condition of continued employment with their employer, become members of a labor organization against their wishes. As a consequence, these plaintiffs are subjected to a form of compulsion and discrimination not applicable to their fellow employees, or to other employees engaged in occupations affecting commerce.

13. The plaintiffs are advised and believe, and therefore allege, that the defendant unions

have represented to the defendant Atlantic Coast Line that the union shop agreement demanded, and as explained in paragraph 6 of this complaint, would be lawful by virtue of the Railway Labor Act, 45 U.S.C.A. 151, as amended 10 January, 1951. On or about 7 May, 1953, the defendant unions filed with the United States District Court for the Eastern District of North Carolina their written Petition for Removal of the instant action from this Court, and in said petition asserted as a defense to this action the aforesaid Amendment to the Railway Labor Act. In anticipation and avoidance of the raising of such a defense by the defendants in this action, the plaintiffs allege that the aforesaid Amendment to the Railway Labor Act is invalid, null and void as being in violation of the Fifth Amendment to the Constitution of the United States inasmuch as Congress in enacting the said amendment arbitrarily, discriminatorily, unreasonably and capriciously accorded less favorable treatment to non-operating railroad employees with respect to the rights of individual employees in connection with union shop agreements than is accorded to other employees in occupations affecting commerce.

14. The defendant labor organizations have exceeded, and will continue to exceed unless restrained, their proper authority as bargaining representatives of the members of their respective crafts, including the named plaintiffs and their fellow employees of the same class, by their demands upon the defendant Atlantic Coast Line for a union shop agreement. The defendant labor organizations, by their demands for and insistence upon a union shop agreement, which is invalid and unlawful under the laws of the State of North Carolina, and which is contrary to the interests of their members and hostile to the expressed wishes and interests of a large number of employees whom they profess to represent, as alleged in detail in paragraph 7 hereof, have exceeded

their authority as bargaining representatives of the plaintiffs and the class whom they represent. The plaintiffs are advised and believe, and therefore allege, that the making of a union shop agreement by the defendant union representatives would constitute a breach of trust by such union representatives and would, therefore, constitute an illegal act on their part.

15. The plaintiffs are advised and believe, and therefore allege, that no election for the designation of bargaining representatives in any of the crafts within the jurisdiction of the defendant unions has been held subsequent to the enactment of the aforesaid 1951 Amendment to the Railway Labor Act which purports to authorize union shop agreements and when the defendant unions were selected to represent the employees of the defendant Atlantic Coast Line the selection was made with the understanding that the defendant unions had no authority to negotiate for or obtain union shop agreements.

16. The plaintiffs are advised and believe, and therefore allege, that during the past several months the defendant labor organizations, or their sister unions, have been successful in persuading other employers to enter into union shop agreements covering their respective class or crafts, both within this state and in other states, that these defendants possess such power, strength, and wealth that they can and do exert strong economic pressure upon employers to the end that they accede to their demands for a union shop; and that if the defendant Atlantic Coast Line fails or refuses to accede to their demands for a union shop agreement covering the employees in their respective class or craft, they will invoke a strike or stoppage of work. The aforesaid past actions and contemplated future actions on the part of the defendant unions constitute a serious threat to the individual property rights and liberties of these plain-

tiffs, and those of each member of their class, and violate the rights protected to them under the North Carolina Right-to-Work Act and the Constitution of North Carolina.

17. The plaintiffs are advised and believe, and therefore allege, that a meeting between the defendant Atlantic Coast Line and the defendant labor organizations has been set for Thursday, 23 April, 1953, at which time the defendant labor organizations will insist that their demands for a union shop agreement be met, and that they will continue to insist upon the consummation of such an agreement to the peril, if necessary, of calling a strike or work stoppage in order to enforce their unlawful demands. Unless all of the defendants are immediately restrained and enjoined from entering into and consummating a union shop agreement, these plaintiffs, and the other employees similarly situated, cannot be adequately protected from the effects of such a contract or agreement which is declared unlawful and contrary to the public policy of this state. The consummation of such an unlawful and illegal agreement or contract as demanded by the defendant labor organizations would cause these plaintiffs, and other employees similarly situated, to suffer serious and irreparable damage and injury, including the loss of their right to earn a livelihood free of the necessity of joining a union or labor organization, the loss of wages if a strike or work stoppage is called, and the loss of seniority and other rights, privileges and benefits accrued to them by reason of their long employment with the defendant Atlantic Coast Line. Unless the defendants are restrained and enjoined from consummating the proposed union shop agreement, these plaintiffs and more than one thousand other employees similarly situated, who desire to continue their employment with and for the defendant Atlantic Coast Line, without the necessity of becoming or remaining a member of one of the defendant labor organizations, will be

unable to do so and will be deprived of their lawful right to retain their jobs and to earn a livelihood. The plaintiffs, and all others who would be wrongfully injured by the consummation of said unlawful and illegal contract, would have no adequate remedy at law and the only remedy which would afford them adequate and proper relief is the injunctive process of this Court. Unless the defendants are restrained and enjoined by this Court from entering into said union shop agreement, the plaintiffs and others similarly situated will either suffer discharge from the employment of the defendant Atlantic Coast Line, together with the loss of valuable rights which they have acquired by reason of many years of faithful and satisfactory service with the defendant Atlantic Coast Line, including vacation rights, retirement and pension rights, and seniority rights, or in the alternative the plaintiffs will be required to make application for membership in, and become a member of one of the defendant labor organizations, against their desires and wishes, and in contravention of the laws and acts of the State of North Carolina.

18. The plaintiffs do not seek by this action to restrain or enjoin the defendants from negotiating the terms or rates of pay, rules, working conditions or any other matters which are not prohibited by law, or from consummating an agreement upon any or all of such provisions if agreement is reached; but, on the contrary, the plaintiffs by this action seek only to restrain each and all of the defendants from entering into a union shop agreement, which as hereinbefore alleged constitutes a violation of the laws of the State of North Carolina, and exceeds the authority of the bargaining representatives.

WHEREFORE, the plaintiffs pray:

1. That this complaint be treated as an affidavit of the facts herein set out;

2. That until the final hearing of this action a temporary restraining order be issued restraining and enjoining the defendants and each of them, their officers, agents, servants, employees and attorneys, and those in active concert or participation with them:

(a) From negotiating for, demanding, consummating, entering into or executing any agreement or contract calling for a union shop or similar arrangement whereby membership in a labor organization is made a condition of continued employment or of employment;

(b) From inducing, encouraging, aiding, ordering, or causing employees of the defendant Atlantic Coast Line to engage in a slowdown, work stoppage, or strike as a means of forcing that defendant to consummate any such agreement;

(c) From ordering a lockout of the employees as a means of forcing the parties to sign any such agreement;

(d) From aiding or procuring or causing to be done any act which they or any of them may be enjoined or restrained from doing;

3. That upon a final hearing of this action, the Court enter a decree finding and declaring that the aforesaid union shop agreement as proposed by the defendant labor organizations to the defendant Atlantic Coast Line is in violation of contractual rights vested in the plaintiffs under their contract of employment with the defendant Atlantic Coast Line, and is null and void and unenforceable; and restraining and enjoining the defendants, and each and every one of them, their agents, servants, employees, and representatives, from in any manner, directly or indirectly, violating the terms and provisions of the Right-to-Work Act of the State of North Carolina, Sessions Laws of 1947, General Statutes 95-78, et seq., and the common law of the State of North Carolina, by denying

or abridging employment to any of the plaintiffs, or the class or group similarly situated, on account of their membership or non-membership in any labor union, organization, or association; and more specifically, from negotiating for, entering into, or carrying out a contract, agreement or understanding, express or implied, whereby the defendant Atlantic Coast Line would maintain a union shop, and from taking any action, concerted or otherwise, either directly or indirectly, to coerce, compel, force, persuade, induce, or encourage that defendant to work union shop.

4. That the Court grant such other and further relief as the plaintiffs may be entitled to, and that upon a final hearing said injunction may be made permanent, and the plaintiffs may have at that time such other and further relief as they may be entitled to; and

5. That notice and order issue forthwith to each of the defendants named herein and to all other persons who may be participating in said acts complained of, and to whom this action may become known, to appear before this Court and show cause, if any they may have, why they should not be permanently enjoined and restrained from the commission of said acts.

ROYCE S. McCLELLAND
4 I.O.O.F. Building
Wilmington, North Carolina,
BROOKS, McLENDON, BRIM & HOLDERNESS
214 Southeastern Building
Greensboro, North Carolina,
Attorneys for Plaintiffs.

(Verified)

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ANSWER OF DEFENDANT ATLANTIC COAST LINE RAILROAD CO. TO AMENDED COMPLAINT

The defendant Atlantic Coast Line Railroad Company, answering the amended complaint of the plaintiffs, alleges and says:

1. Paragraph 1 of the complaint is admitted.
2. Paragraph 2 of the complaint is admitted.
3. Paragraph 3 of the complaint is admitted.

4. Paragraph 4 of the complaint, upon information and belief, is admitted.

5. Paragraph 5 of the complaint is, upon information and belief, admitted.

6. Paragraph 6 of the complaint is admitted.

7. It is admitted that a substantial number of the employees of the defendant who are members of the classes or crafts represented by the defendant labor organizations, including members of said unions, are strongly opposed to the principles of a union shop agreement, and have made that opposition known to this defendant; defendant further admits that a majority of its employees who are members of or eligible for membership in the defendant American Train Dispatchers Association have requested that Association in writing to cease any negotiations with the defendant railroad for a union shop agreement, and photostatic copies of a petition addressed by its members to that Association have been supplied to this defendant; except as specifically set out herein, this defendant has no knowledge of the precise number of its employees who are opposed to the union shop principle, but it is informed and believes that a substantial number of its employees are so opposed to the union shop principle; defendant further states that the mid-month count of employees made by the defendant railroad for the Interstate Commerce Commission in August, 1953, shows a total of 77 employees who are members of or eligible for membership in the defendant American Train Dispatchers Association, while 53 such employees have signed a petition requesting that Association to cease any negotiations for a union shop agreement.

8. Paragraph 8 of the complaint is admitted.

9. The defendant Atlantic Coast Line Railroad Company does not grant to its employees or maintain for them an independent system of retirement or pension rights, but it does contribute to the Railroad Retirement Board a monthly sum for each employee on its payroll, and it is admitted that the rights acquired by its employees under the Railroad Retirement Act will be affected by their discharge by reason of failure to join a labor organization, or for any other reason; the remaining allegations of paragraph 9 are admitted.

10. Paragraph 10 of the complaint, on information and belief, is admitted.

11. Paragraph 11 of the complaint, on information and belief, is admitted.

12. As to paragraph 12 of the complaint, the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen, representing engineers and firemen, respectively, employed by this defendant have served notices demanding execution of union shop agreements; the Brotherhood of Railroad Trainmen and the Order of Railway Conductors, representing trainmen and conductors, respectively, employed by this defendant have served no demand for a union shop agreement; except as modified hereinabove, the allegations of paragraph 12 are admitted..

(13) As to paragraph 13 of the complaint, it is admitted that the defemdant unions had represented to this defendiant that the union shop agreement demanded byy them would be lawful by virtue of the Railway LLabor Act, and that the defendant unions have filed with the United States District Court for the Eastern District of North Carolina their wrritten petition for removal of the instant acttion from this court, and in said petition assemrted as a defense to the action the said Railwmay Labor Act. The remaining allegations of parragraph 13 constitute a conclusion of law which it is not necessary for this defendant to answwer.

14. Paragraph 14 of the complaint alleges breach of a fiduciary duty on the part of the defendants other than the Atlantic Coast Line Railroad Company, and therefore this defendant is not required to answer the same.

15. Paragraph 15 of the complaint is admitted.
16. Paragraph 16 of the complaint is admitted.

17. It is admitted that a meeting between this defendant and the defendant labor organizations was held on Thursday, the 23rd of April, 1953, at which time the defendant labor organizations insisted that their demands for a union shop agreement be met, and further informed this defendant that their demands would continue in the consummation of such an agreement, and that if this defendant declined to execute such an agreement, the defendant labor organizations would take whatever steps they thought necessary to compel the execution of a union shop agreement; it is further admitted that if such a union shop agreement is negotiated among the several defendants to this action, the plaintiffs will suffer discharge from the employment of the defendant Atlantic Coast Line, together with the loss of valuable rights which they have acquired by reason of many years of faithful and satisfactory service to this defendant, including vacation rights, retirement and pension rights, and seniority rights, unless they make application for membership in and become members of one of the defendant labor organizations, against their own desires and wishes, which this defendant is informed and believes would be in contravention of the laws and acts of the State of North Carolina; with respect to the other allegations of paragraph 17, such allegations constitute conclusions of law which this defendant is not required to answer.

FOR A FURTHER DEFENSE, the defendant Atlantic Coast Line Railroad Company alleges and says:

That this defendant is obligated by law to

treat with the defendant labor organizations as the duly certified collective bargaining representatives of the respective crafts or classes employed by it; that it is faced on the one hand with a demand by said defendant labor organizations for the execution of a union shop agreement, and on the other hand by the objections of large numbers of its individual employees to the execution of such agreements, upon the claim that such agreements are in violation of the public policy and existing statutes of the State of North Carolina, a claim which this defendant is informed and believes is well-founded; that if this defendant should execute such union shop agreements, it would undoubtedly be faced with suits filed by such individual employees alleging the invalidity of any union shop agreement entered into with the other defendants, and that thereby this defendant might be subjected to liability in damages, if such union shop agreements should eventually be determined to be invalid.

WHEREFORE, defendant Atlantic Coast Line Railroad Company prays the Court:

(1) That the effect of the North Carolina Statute upon the right of the defendants to execute union shop agreements be determined herein.

(2) For such other and further relief to which the defendant may be entitled in the premises.

M. V. BARNHILL, JR.
ALAN A. MARSHALL

(Verified)

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AMENDED ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY TO AMENDED COMPLAINT

Now comes the defendant Atlantic Coast Line Railroad Company and amends its Answer to the Amended Complaint herein, as follows:

The heading on the first page of said Answer should show that the matter is pending in the State of North Carolina, County of New Hanover, in the Superior Court, in lieu of the showing upon said page that the matter is pending in United States District Court for the Eastern District of North Carolina.

M. V. BARNHILL, JR., and
ALAN A. MARSHALL,
Attorneys for Defendant Atlantic Coast Line Railroad Company,
By /s/ Alan A. Marshall.

(Verified)

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ANSWER OF UNION DEFENDANTS

Come now all the defendants in the above-entitled cause, except Atlantic Coast Line Railroad Company, (hereinafter referred to as the union defendants) and, for Answer to the Amended Complaint, say:

1. The union defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the complaint, and therefore deny the same.

2. The union defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint, and therefore deny the same.

3. The union defendants admit that the defendant Atlantic Coast Line Railroad Company is a corporation and operates its business as a common carrier on an extensive basis within the State of North Carolina, and, in order to perform the normal operations of its business, employs in said State a large number of persons including persons employed in the several occupational classifications set forth in paragraph 3 of the complaint. The union defendants are without knowledge or information sufficient

to form a belief as to the truth of the other allegations contained in paragraph 3 of the complaint, and therefore deny the same. The union defendants allege that the defendant Atlantic Coast Line Railroad Company operates an extensive railroad transportation system in many states in addition to the State of North Carolina, is engaged in the transportation of passengers and property by railroad as a common carrier among the several states in which it operates, is a carrier by railroad subject to the Interstate Commerce Act, and is therefore a "carrier" as defined in the Railway Labor Act, U. S. Code, Title 48, Section 151, et seq.

4. The union defendants admit the allegations contained in paragraph 4 other than the last sentence thereof, except that they deny that all of their members are employees of the defendant Atlantic Coast Line Railroad Company. The union defendants deny the allegations contained in the last sentence of paragraph 4 of the complaint. The union defendants allege that each of them is a standard railway labor organization organized in accordance with the provisions of the Railway Labor Act (U.S.C. Title 45, Section 151, et seq.) and is the duly designated and authorized representative pursuant to that Act of the employees of Atlantic Coast Line Railroad Company of its respective class or craft.

5. The union defendants admit the allegations contained in paragraph 5 of the complaint.

6. The union defendants aver that in their capacities as the duly designated and authorized representatives of the employees of Atlantic Coast Line Railroad Company of their respective crafts or classes they have sought from February 5, 1951, to date of commencement of this action and the issuance of a temporary restraining order therein, to negotiate with Atlantic Coast Line Railroad Company a so-called union shop agreement in accordance with the terms

specifically authorized by Section 2, Eleventh of the Railway Labor Act (U.S.C. Title 45, Section 152, Eleventh) to be contained in such agreements, and requiring, among other terms, as a condition of continued employment, that within 60 days following the beginning of such employment, or the effective date of such agreement, whichever is the later, all employees shall become members of the labor organization representing their craft or class: Provided, that such agreement shall not require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. The union defendants further aver that in the conduct of negotiations seeking to consummate such agreement they have proceeded strictly in accordance with the procedures established by the Railway Labor Act, including the service of written notices in accordance with Section 6 of the Act, conferences with the representatives of the carrier, Atlantic Coast Line Railroad Company, utilization of services of the National Mediation Board, appearance before and presentation of the merits of their proposals to a Presidential Emergency Board appointed pursuant to Section 10 of the Railway Labor Act, acceptance of the recommendations of said Emergency Board and communication of such acceptance to the representatives of Atlantic Coast Line Railroad Company, and further efforts extending over a period of more than one year subsequent to the making of the report of said Emergency Board and prior to the commencement of this action to negotiate a settlement of the dispute. Throughout the course of such negotiations the union defendants proposed as a basis for set-

tling the dispute a number of forms of union shop agreement containing varying provisions, all in accordance with the terms authorized to be contained in such agreements by Section 2, Eleventh of the Railway Labor Act. The last such form of agreement proposed by the union defendants was identical in substance with the form of such agreement that has been made by hundreds of carriers throughout all parts of the United States, including practically all the major railroads of the country. Throughout all such negotiations the defendant Atlantic Coast Line Railroad Company has steadfastly refused to make any kind of union shop agreement. Except as admitted by the averments contained in this paragraph, the union defendants deny the allegations contained in paragraph 6 of the complaint.

7. The union defendants deny the allegations contained in paragraph 7 of the complaint. The union defendants allege that in the formulation of their union shop proposals and in their efforts to negotiate a union shop agreement with the defendant Atlantic Coast Line Railroad Company they have followed and have been guided by the normal and customary practices and procedures contemplated by the Railway Labor Act in determining the desires and best interests of the employees they represent in the same manner as is done in the formulation and negotiation of any other provision of a collective bargaining agreement under the Railway Labor Act.

8. Paragraph 8 of the complaint contains only conclusions of law requiring no answer. To the extent that said paragraph may be construed to contain any allegations of fact, such allegations are denied. The union defendants aver that the laws and statutes of the State of North Carolina have no application to the plaintiffs or any defendant herein in the determination of their respective rights and obligations with respect to the making or carrying out of a union shop agreement between the union de-

fendants and the defendant Atlantic Coast Line Railroad Company, said subject matter having been completely pre-empted by the Congress of the United States in the enactment of the Railway Labor Act and its amendment from time to time. The union defendants further aver that all forms of union shop agreements that they have ever proposed making with the defendant Atlantic Coast Line Railroad Company would, if agreed to by the defendant Atlantic Coast Line Railroad Company, constitute a legal and valid agreement in every respect and would not violate any applicable provision of the Constitution or laws of the United States or of any State.

9. The union defendants aver that such retirement and pension rights as have accrued or may accrue to the plaintiffs by virtue of their employment by the defendant Atlantic Coast Line Railroad Company are governed by federal statute, namely, the Railroad Retirement Act (U.S.C. Title 45, Section 228(a), et seq.). The union defendants further aver that vacation and holiday rights, seniority rights, and other rights of value to employees of the defendant Atlantic Coast Line Railroad Company are established by and exist by virtue of the collective bargaining agreements that have from time to time been made by the union defendants with the defendant Atlantic Coast Line Railroad Company. All such rights are subject to modification or conditioned by such further collective bargaining agreements as may from time to time be made by the union defendants with the defendant Atlantic Coast Line Railroad Company. Except as admitted by the averments contained in this paragraph the allegations contained in paragraph 9 of the complaint are denied.

10. Paragraph 10 of the complaint contains only conclusions of law requiring no answer. To the extent that said paragraph may be construed to contain any allegations of fact, such allegations are denied. The union defendants further aver that, upon the second removal of

this cause to the District Court of the United States for the Eastern District of North Carolina, following the filing of the amended complaint, the plaintiffs filed in the said court a motion to remand, stating in answer to the allegations of the removal petition, "It is denied that the plaintiffs based their claim for relief upon the Constitution and laws of the United States." By their insistence that no claim of the plaintiffs for relief is predicated upon the Constitution or laws of the United States the plaintiffs induced the District Court of the United States for the Eastern District of North Carolina to remand the case to this Court upon the ground that "The cause is one arising under the North Carolina statute and the plaintiffs must prevail, if at all, through the effectiveness of such statute." Having thus disclaimed any right to relief under the Constitution and laws of the United States, and having induced judicial reliance on such disclaimer, the plaintiffs are now estopped to assert the Constitution or laws of the United States as grounds for relief.

11. Paragraph 11 of the complaint contains only conclusions of law requiring no answer. Should said paragraph be construed to contain any allegations of fact, such allegations are denied.

12. The union defendants admit that the defendant Atlantic Coast Line Railroad Company has in its employment, in addition to the employees represented by the union defendants, so-called "operating employees" and that such employees are represented by unions under the Railway Labor Act. The union defendants are without knowledge or information sufficient to form a belief as to the truth of any other allegations contained in paragraph 12 of the complaint, and therefore deny the same.

13. The union defendants admit the allegations of fact contained in paragraph 13 of the complaint other than the last sentence thereof,

except that the union defendants deny that in their Petition for Removal the amendment to the Railway Labor Act of January 10, 1951, was "asserted as a defense to this action." The last sentence of paragraph 13 of the complaint contains only conclusions of law requiring no answer. Should said sentence be construed to contain any allegations of fact, such allegations are denied.

14. The union defendants deny the allegations contained in paragraph 14 of the complaint.

15. The union defendants admit the allegations contained in paragraph 15 of the complaint, except that they deny that at the time of their selection as representatives of their classes or crafts of Atlantic Coast Line employees there was any understanding other than that they would represent such employees in accordance with the Railway Labor Act, including amendments that might from time to time be enacted. The union defendants aver that the only reason there has been no election for the designation of collective bargaining representatives among said employees since the 1951 amendment to the Railway Labor Act is that the majority of the employees in each craft or class represented by the union defendants approve of the manner in which they are being represented, including the negotiations set forth in paragraph 6 of this answer for a union shop agreement.

16. The union defendants admit that in the period from February 5, 1951, to the commencement of this action they have negotiated many union shop agreements with other carriers, all in accordance with Section 2, Eleventh of the Railway Labor Act. The union defendants deny all other allegations contained in paragraph 16 of the complaint and aver that the course of events that might have occurred in the further negotiations by the union defendants with Atlantic Coast Line Railroad Company for a union shop agreement had such negotiations not

been restrained by this court is wholly uncertain and speculative.

17. The union defendants admit that they had an appointment with representatives of Atlantic Coast Line Railroad Company to discuss their proposal for a union shop agreement on April 23, 1953. The union defendants deny all other allegations contained in paragraph 17 of the complaint, and aver that the course of events that might have occurred in the further negotiations by the union defendants with Atlantic Coast Line Railroad Company for a union shop agreement had such negotiations not been restrained by this court is wholly uncertain and speculative.

18. Paragraph 18 of the complaint contains only conclusions of law requiring no answer.

19. Further answering the complaint the union defendants aver that the plaintiffs by wrongfully invoking the restraining process of this court have prevented the union defendants from fully performing their functions as representatives of employees of Atlantic Coast Line Railroad Company and from exercising their rights as such representatives, and that the plaintiffs have thereby damaged the union defendants to the extent of many thousands of dollars.

WHEREFORE, the union defendants pray that the complaint be dismissed; that the court determine the amount of damages suffered by the union defendants through the plaintiffs' wrongful invocation of the restraining processes of the court and award such damages to the union defendants together with costs.

/s/ George Rountree, Jr.
212-214 Princess Street
Wilmington, N.C.

/s/ Lester P. Schoene
Schoene and Kramer
1625 K Street, N.W.
Washington 6, D. C.

/s/ Milton Kramer
/s/ Charence M. Mulholland
Mulholland, Robie & Hickey
Tower Building
Washington 5, D.C.
/s/ Edward J. Hickey.

(Verified)

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REPLY OF PLAINTIFFS

The plaintiffs, replying to the Answer of the Union Defendants filed in this cause on 29 January, 1954, say and allege:

That the allegations contained in paragraph 19 of the Defendant Unions' Answer and/or Counterclaim are denied. It is specifically denied that the plaintiffs wrongfully invoked the restraining process of the Court, or that they have prevented the Union Defendants from performing and exercising their normal and lawful functions and rights, or that the Union Defendants have been damaged to any extent whatsoever.

WHEREFORE, the plaintiffs, having fully replied to the further defense and/or counterclaim of the Defendant Unions, pray that same be dismissed and that the plaintiffs be granted the relief requested in their complaint heretofore filed in this action.

THORNTON H. BROOKS
R. S. McCLELLAND
Attorneys for Plaintiffs.

(Verified)

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DEFENDANT UNIONS' SUGGESTED FINDINGS OF FACT

1. The named plaintiffs are citizens and residents of the County of New Hanover, State of North Carolina, and are employees of or have an employment relation with the defendant Atlantic Coast Line Railroad Company (herein-

after referred to as the "defendant carrier"). The dates of their initial employment by the defendant carrier are as follows:

| | |
|---|---|
| E. C. Hudson | 10 May 1908 |
| L. J. DeVane | 15 November 1914 |
| W. R. Chisholm | 18 January 1917 |
| J. M. Tilley | 19 October 1925 |
| T. A. Shepard, Jr. | 2 October 1935 |
| J. M. Binkley | 4 December 1936 |
| H. L. Darden | 17 November 1937 |
| I. E. Rackley | 28 November 1939 |
| J. H. Shannon | 17 March 1941 |
| C. W. Poisson | 15 September 1950. |

2. The following plaintiffs are employed by the defendant carrier, and are members of the following duly accredited collective bargaining representatives of the crafts in which they are employed on the defendant carrier as follows:

| | Craft | Member of Coll.Barg. Repr. |
|---|---|---|
| Hudson | Train Dispatcher | American Train Dispatchers Assn. |
| Binkley | Carman | Bro. of Ry.Carmen of America |
| Rackley | Telegrapher | Order of R.R. Telegraphers |
| DeVane | Clerk | Bro. of Ry. and SS. Clerks, Freight Handlers, Express and Station Employee. |

3. The remaining plaintiffs are not members of any of the defendant unions. The crafts or classes in which they are employed by or have an employment relation with the defendant carrier, and the duly accredited collective bargaining representative of said crafts and classes on the defendant carrier are as follows:

| | Craft | Collective Bargaining Representative |
|---|---|---|
| Tilley | Clerk | Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees |
| Shepard | " | " |
| Chisholm | " | " |
| Darden | " | " |
| Shannon | " | " |
| Poisson | Maintenance of Way | Brotherhood of Maintenance of Way Employees. |

4. Chisholm occupies a position excepted from the bulletining and displacement rules of the Collective bargaining agreement covering his class, and would not be affected by the proposed union shop agreement hereinafter mentioned. Shepard was formerly a member of the collective bargaining representative of his class, but was expelled from that union. Poisson is not employed by the defendant carrier, but retains seniority rights in the class represented by the Brotherhood of Maintenance of Way Employees.

5. Defendant Carrier is a corporation with its principal office and place of business in Wilmington, North Carolina, and it operates its business as a common carrier on an extensive basis within the State of North Carolina, and in other states, and among said states. It is a "carrier" as defined in the Railway Labor Act (U.S.Code, Title 45, Sec. 151, et seq.).

6. Defendant carrier, in the performance of the normal operations of its business, employs in the State of North Carolina a large number of persons. It employs at its offices, shops and places of business in North Carolina, among others, workers in the following classifications: machinists, boilermakers, blacksmiths, sheet metal workers, electrical workers, railway carmen, firemen, oilers, roundhouse and shop laborers, clerks, freight handlers, express

and station employees, maintenance of way employees, telegraphers, signalmen, restaurant employees, and train dispatchers.

7. The defendants International Association of Machinists; International Brotherhood of Boilermakers, Iron Shop Builders and Helpers of America; International Brotherhood of Blacksmiths, Drop Forgers and Helpers; Sheet Metal Workers' International Association; International Brotherhood of Electrical Workers; Brotherhood Railway Carmen of America; International Brotherhood of Firemen and Oilers; Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of Maintenance of Way Employees; The Order of Railroad Telegraphers; Brotherhood of Railroad Signalmen of America; Hotel and Restaurant Employees and Bartenders International Union; American Train Dispatchers Association (herein collectively referred to as defendant unions), are each an unincorporated labor association or organization, known in labor parlance as craft unions, and composed respectively of machinists; boilermakers, blacksmiths, sheet metal workers; electrical workers, railway carmen, firemen, oilers, roundhouse and shop laborers; clerks, freight handlers, express and station employees, maintenance of way employees; telegraphers; signalmen; restaurant employees; train dispatchers; and others.

8. Each of the defendant unions has among its membership employees of the defendant carrier in the State of North Carolina. The defendant unions perform in the County of New Hanover, State of North Carolina, many of the acts and purposes for which they were formed, as, for example: organizing and associating together some of the employees of the defendant carrier who perform work in the classification of their respective crafts; accepting into their membership those employees of the defendant carrier who belong to their respective crafts and who desire to become members of the respective

craft unions; negotiating agreements on behalf of the respective crafts concerning rates of pay, rules, and working conditions; and participating in efforts to settle all disputes on behalf of the employees in their respective crafts.

9. Each of the defendant unions is a standard railway labor organization organized in accordance with the provisions of the Railway Labor Act and is and at all times material to this case has been the duly designated and authorized representative pursuant to that Act of the employees of the defendant carrier of its respective class or craft. Defendant unions, each being a craft union, together are known as the non-operating unions of the defendant carrier.

10. On January 10, 1951, the President of the United States approved an Act of Congress (Pub. L. 914, 81st Cong.) amending the Railway Labor Act (U.S.C. Title 45, Section 151, et seq.) by adding Subsection Eleventh to Section 2 thereof. Said subsection provides that notwithstanding any other provision of the Railway Labor Act or any other Act of Congress or any statute or law of any State, carriers subject to that Act and labor organizations duly authorized to represent employees pursuant to that Act should be permitted to enter into agreements requiring, with certain limitations, that as a condition of continued employment employees shall become members of the labor organization representing their craft or class. For a period of twelve years prior to the aforesaid amendment to the Railway Labor Act, defendant unions had discussed in their lodge meetings, national conventions, and union publications the desirability of union shop contracts and amendatory legislation to permit such agreements.

11. From February 5, 1951, to the date of the commencement of this action, the defendant unions sought to obtain from the defendant carrier a union shop agreement within the limi-

ions permissible under the Railway Labor
. Such efforts were conducted in accordance
h the procedures of the Railway Labor Act,
luding notices in accordance with Section 6
that Act, conferences with representatives
the defendant carrier, utilization of the
vices of the National Mediation Board, ap-
rance before and presentation of the merits
their proposal to a Presidential Emergency
rd appointed pursuant to Section 10 of the
, acceptance of the recommendations of said
rd and communication of said acceptance to
defendant carrier and further efforts to
otiate a settlement extending over a period
more than one year subsequent to the report
said Emergency Board and up to the commence-
t of this action.

2. Throughout the period and the proceed-
s described in Finding 11, the defendant
ons proposed as a basis for settling the
pute union shop agreements containing vary-
provisions, all within the limitations of
Railway Labor Act. Initially the union de-
dants requested a contract in the broadest
ns permitted by the Railway Labor Act; after
eements had been negotiated with a few
lroads, defendant unions asked the defendant
rier to enter into a similar union-shop
eement, which was more restrictive than the
ginal proposal; after the report of the
sidential Emergency Board, defendant Unions
posed a settlement in accordance with the
ommendations of the report. The last form
nion-shop agreement proposed by the defend-
Unions was identical in substance with the
n of such agreement that had finally been
e with many railroads throughout the coun-
, including almost all the major railroads.
ughout the entire period the defendant
rier has steadfastly refused to enter into
kind of union-shop agreement.

3. Each of the defendant unions is duly
tified by the National Mediation Board, or
recognized by the defendant carrier, as the

duly authorized representative of the employees of the defendant carrier in the crafts and classes represented by such union, and has been so certified or recognized for periods of time ranging from eight years to 35 years. No requests or demands for elections or changes in certification have been made with respect to any of the crafts or classes represented by any of the defendant unions.

14. Plaintiffs and other employees of defendant carrier represented in collective bargaining by defendant unions have, under the collective bargaining agreements between defendant carrier and defendant unions, seniority, holiday, vacation, and other rights. Under the Railroad Retirement Act (USC Title 45, Section 228(a), et seq.), there is vested in them retirement or pension benefits.

15. At the time of the commencement of this action, conferences were being held between representatives of the defendant carrier and the General Chairman of the several union defendants on said carrier. A General Chairman is the highest official of a union defendant on the defendant carrier, elected directly or indirectly by the members of his union employed on the defendant carrier, and he is subject to supervision and control by the national organization. A General Chairman does not have authority to call a strike. Under the constitutions and laws governing the several defendant unions, various procedures must be followed, including a vote, before a strike may be called. While strike ballots have been printed, they have not been distributed, nor has authority to distribute them been obtained. If such authority should be asked for, it would require about three months under the union procedure before a strike could begin.

16. Under the form of union-shop agreement last proposed by the defendant unions, concerning which defendant unions and defendant carrier were holding conferences when this

action was commenced, a non-member of a defendant union would have 60 days within which to comply with the requirements of such agreement, and, if he availed himself of the administrative procedures of the agreement, would have about four months before his employment would be terminated.

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LOWER COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action came on for trial before the Court without a jury at the 1 November 1954 Special Term of New Hanover Superior Court, at Wilmington, North Carolina. The plaintiffs and the defendants appeared in person and were represented by counsel, oral testimony and documentary evidence were offered by all parties, oral arguments were made by counsel, and the Court having been fully advised in the premises, now makes and files its:

FINDINGS OF FACT

1. The action was instituted in the Superior Court of New Hanover County, Wilmington, N.C., on 23 April, 1953, by the filing of a Complaint, issuance of Summons, and the filing of an Application for Temporary Restraining Order. Upon consideration of said application and complaint, treated as an affidavit, Honorable Q. K. Nimocks, Jr., the Judge regularly assigned and holding the Courts of the Eighth Judicial District, in Court at Wilmington, N.C., granted a Temporary Restraining Order on the 23rd day of April, 1953, enjoining and restraining the defendant Atlantic Coast Line Railroad Company (herein referred to as Defendant Carrier) and the defendant labor organizations (herein referred to as Defendant Unions) from demanding or executing a union shop agreement affecting the named plaintiffs and the members of their class, and from causing a strike or lockout as a means of forcing such an agreement. On 23

April, 1953, the Sheriff of New Hanover County duly served the Complaint and Temporary Restraining order upon each of the defendants and made proper return on the original summons. The said temporary restraining order has continued in full force and effect to this date.

2. The named plaintiffs, except as hereinafter noted, are each regular permanent employees of the Defendant Carrier with the following accumulated service:

| | |
|---|---|
| E. C. Hudson | 10 May 1908 |
| L. J. DeVane | 15 November 1914 |
| W. R. Chisholm | 18 January 1917 |
| J. M. Tilley | 19 October 1925 |
| T. A. Shepard, Jr. | 2 October 1935 |
| J. M. Binkley | 4 December 1936 |
| H. L. Darden | 17 November 1937 |
| I. E. Rackley | 28 November 1939 |
| J. H. Shannon | 17 March 1941 |
| C. W. Poisson | 15 September 1950. |

Each of the named plaintiffs is a citizen and resident of Wilmington, N. C. Chisholm occupies a position excepted from the bulletin and displacement rules of the collective bargaining agreement covering his class and would not be affected by the proposed union shop agreement hereinafter mentioned. Poisson is not employed by the Defendant Carrier, but retains seniority rights in the class represented by the Brotherhood of Maintenance of Way Employees.

3. The action is brought for and on behalf of the named plaintiffs individually, as well as in a representative capacity on behalf of each and all other persons of a class to which they belong and which is similarly situated, said class consisting of at least 1,580 fellow non-operating employees who are opposed to a union shop agreement between the Defendant Carrier and the Defendant Labor Unions and who would be subject to the terms and conditions of a union shop agreement between said Unions and Carrier. Each member of the class has a

common, joint, and general interest in the questions of law and fact involved and the relief sought in the actions, and their number is so great as to make it impractical, difficult or impossible to bring them all before the Court in a joint complaint. The named plaintiffs, except Chisholm, having the same interest as each member of the class, fairly, properly, and legally represent the class of persons, including themselves, in the prosecution of this action, and will assure a fair and adequate representation of all members in seeking to restrain the execution of an union shop agreement.

4. The Defendant Carrier is a corporation with its principal office and place of business in Wilmington, N.C., and it operates its business as a common carrier on an extensive basis within the State of North Carolina, and in other states, and among said states. It is a "carrier" as defined in the Railway Labor Act.

5. The Defendant Unions, thirteen in number, are each a craft union and are known as the non-operating unions of the Defendant Carrier. Prior to 1947 they were certified by the National Mediation Board, or recognized by the Defendant Carrier, as representatives of the employees of the Defendant Carrier for their respective classes or crafts and at all times material to this action have served as the authorized representatives of the employees in their respective class or craft. These labor organizations perform in the State of North Carolina many of the acts and purposes for which they were formed, as, for example, negotiating agreements with the Defendant Carrier on behalf of the named plaintiffs and the members of the class in their respective crafts. No elections for bargaining representatives have been conducted by the National Mediation Board among the various crafts since 1947, nor have any requests or demands for elections been made on that Board subsequent to 1947.

6. Each of the Defendant Unions is a standard railway labor organization organized in accordance with the provisions of the Railway Labor Act and is and at all times material to this case has been the duly designated and authorized representative pursuant to that Act of the employees of the Defendant Carrier of its respective class or craft. Defendant Unions, each being a craft union, together are known as the non-operating unions of the Defendant Carrier. The named plaintiffs herein, and their fellow employees of a class whom they represent and who are similarly situated, are either regular members of one or the other of the defendant labor organizations or are eligible for membership therein, and, except for Plaintiff Chisholm, will be covered and bound by the terms of any agreement entered into between the aforesaid defendant labor organizations and the Defendant Carrier. Specifically, the Plaintiff Hudson is a member of the defendant American Train Dispatchers Association; the Plaintiff Binkley is a member of the defendant Brotherhood of Railway Carmen of America; the Plaintiff Rackley is a member of the defendant Order of Railroad Telegraphers; the Plaintiff DeVane is a member of the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; the Plaintiffs Tilley, Shepard, Chisholm, Darden and Shannon are each eligible for membership in the last mentioned union; and the Plaintiff Poisson is eligible for membership in the defendant Brotherhood of Maintenance of Way Employees.

7, In the winter and spring of 1953, a large number of employees of the Defendant Carrier who were members of, or eligible for membership in, one or another of each of the Defendant Unions formed an organization to oppose the execution of a union shop agreement between their employer and these non-operating unions. Prior to the institution of this action a petition was signed by approximately 1,580

employees of the Defendant Carrier who are represented by the Defendant Unions. Said Petition provides:

"PETITION
of the employees of the Atlantic Coast Line Railroad Company.

My signature below signifies that I am opposed to the principle of the Union Shop, for the following reasons:

1) I believe it infringes upon my inherent Constitutional rights as a free American, by compelling me to pay a toll for the right to work;

2) I believe it is not consistent with good unionism, which was built on a voluntary basis;

3) I believe the Union Shop, like the outlawed Closed Shop, is just another form of economic slavery.

I understand that my signature does not obligate me financially.

I UNDERSTAND THIS IS NOT A MOVE AGAINST ORGANIZED LABOR."

This petition was circulated among a group of employees who were either members of, or eligible for membership in, one or another of the defendant labor organizations, and was signed by the named plaintiffs and by a number of Union employees, all of whom are opposed to the principle of a union shop agreement. The existence of this petition was made known to the defendant Carrier by letter of 16 April, 1953. A number of the employees of the Defendant Carrier other than those signing the petition are opposed to the union shop and do not desire to be covered thereby.

8. In April, 1953, there were approximately 77 employees of the Defendant Carrier who were

members of, or eligible for membership in, the defendant American Train Dispatchers' Association. Prior to April 15, 1953, a petition or letter was signed by 53 of these employees, and on that day one of the named plaintiffs herein, Irvin E. Rackley, a member of that labor organization, transmitted by mail the original of said petition to the President of the Union at Chicago, Illinois, and photostatic copies to the General Chairman of that association, D. A. Foster, at his office in Wilmington, N.C., and to the Defendant Carrier in Wilmington. By letter dated April 17, 1953, Mr. Foster acknowledged receipt of the letter and petition. Said petition provides:

> "The undersigned train dispatchers employed in active and active-extra train dispatching service in the several offices of the Atlantic Coast Line Railroad Company, hereby petition the American Train Dispatchers' Association to consider null and void any previous request submitted by ballot for the Association to negotiate a union shop agreement between the Atlantic Coast Line Railroad and its train dispatchers, to cease any such negotiations that may be in progress, and to exempt the train dispatchers employed by the Atlantic Coast Line Railroad from any closed shop agreement that may be made between the American Train Dispatchers' Association and the Southeastern Carriers."

9. From February 5, 1951, to the date of the commencement of this action, the Defendant Unions have sought to obtain from the Defendant Carrier a union shop agreement covering the non-operating employees including the named plaintiffs and the class they represent. To this end the Defendant Unions served written notices upon the Defendant Carrier in February, 1951, under Section 6 of the Railway Labor Act, have conferred with its representatives, have utilized the services of the National Mediation Board, and appeared before and presented their proposals to a Presidential Emergency Board in

1952, pursuant to Section 10 of the Act. Throughout such negotiations the Defendant Carrier declined to enter into a union shop agreement. Pursuant to a request made by the Defendant Unions in March, 1953, further conferences between their representatives and the Defendant Carrier over the formers' request for an agreement containing a union shop were held in Wilmington, North Carolina, on April 22, 1953. At said conference the Defendant Unions presented for adoption by the Defendant Carrier a written form of union shop agreement which was identical in substance with the form of agreement previously entered into by Defendant Unions with other carriers in the United States. (For copy of proposed agreement, see Plaintiffs' Exhibit No. 1, which by reference is incorporated herein.)

10. A joint conference of all General Chairmen of the Defendant Unions represented on the Defendant Carrier, together with Chairman G.E. Leighty of the Employees' National Conference Committee, Seventeen Cooperating Railway Labor Organizations and Chief Executives of the Defendant Unions, was held in Washington, D.C., on 27 March, 1953. The purpose of the meeting was for the Chief Executives to place the status of the union shop before them and to formulate plans for obtaining a union shop agreement with the Defendant Carrier. The type of agreement to be proposed was agreed upon, the same being identical in substance with the form of agreement entered into by the Defendant Unions with other carriers in the United States. Plans were there formulated by the Defendant Unions to continue the negotiations with the Defendant Carrier until a union shop agreement was signed, or until the carrier refused to sign in which event the refusal would be referred to the membership of all the Defendant Unions for a strike vote. The necessary permission or consent for a strike ballot had previously been obtained from headquarters of all the Defendant Unions, and an official strike ballot and circular had been prepared and printed by them, dated 20

November, 1952, and same was ready for spreading when needed. General Chairman Wooten of Railway Clerks, Winters of the Carmen, and Winberry of Maintenance of Way were selected to personally arrange for a negotiation conference with Defendant Carrier, and this was fixed for 22 April, 1953.

11. The Union Shop agreement as proposed by the Defendant Unions to the Defendant Carrier on 22 April, 1953, was a mimeographed form consisting of 8 pages, prepared by General Chairman Wooten on 21 April. He copied verbatim the agreement as entered into between the Unions and the Eastern Carriers, merely substituting the name of the Atlantic Coast Line Railroad Company for the Pennsylvania Railroad and changing the dates. This agreement provided, in part, that all employees of the Defendant Carrier, including the plaintiffs, who are represented by the Defendant Unions, shall, as a condition of continued employment, become members of that labor organization which represents their craft or class within sixty calendar days of the date they first perform compensated service as such employees after the effective date of the agreement, and that thereafter they shall maintain membership in such labor organization as a condition of employment with the Defendant Carrier. (The agreement further provides that an employee whose employment is terminated as a result of non-compliance with the provisions of the agreement shall be regarded as having terminated his employee relationship for vacation purposes.) The proposed agreement was thereafter signed by the General Chairmen and by or on behalf of executive officers of the Defendant Unions who were non-residents of North Carolina and who did not attend the conference. (The employee members of the Defendant Unions did not participate in the preparation of the proposed agreement, had not been advised of its contents, and were not furnished copies.) On 22 April the proposed agreement was submitted to the Defendant Carrier with the signatures of all the General Chairmen and

executive officers affixed. (The General Chairmen and executive officers of the Defendant Unions attended the conference but neither rank and file members of the Union nor a local negotiating committee were present.) B. W. Kinkaid, Vice President of the Defendant Order of Railroad Telegraphers, was selected spokesman for the Defendant Unions. (The General Chairmen possessed no authority from their respective Unions to make any substantial changes in the terms of the proposed agreement.)

12. Except for the Defendant American Train Dispatchers' Association, none of the Defendant Unions conducted a ballot, poll, (or canvass) of its members to determine their views and wishes on the union shop. After being advised of the opposition to a union shop agreement by a substantial number of employees, including some of their members, the Defendant Unions took no steps to withdraw or modify their demands therefor.

13. (During the negotiation conference on 22 April, 1953, the defendant Unions took the firm position that as the proposed agreement was the same as entered into with the Eastern Carriers, and as they had pared it down to a bone, they were dedicated to that proposed agreement. As a result of the statements made by the Defendant Unions in this conference and in previous articles, together with the existence of the strike ballot ready to be spread, the Defendant Carrier reasonably concluded that a strike would be called by the Defendant Unions if a union shop agreement was not soon consummated. The Defendant Unions would have exercised their economic strength and called a strike had a union shop agreement not been reached, and except for the issuance of the Temporary Restraining Order on 23 April.)

14. The plaintiff employees, and other members of their class, have acquired certain employment rights of value by reason of their original comtract of employment and subsequent

service with the Defendant Carrier, and by reason of the contracts negotiated by the Defendant Unions with the Defendant Carrier covering their respective class or crafts. Among such rights are: Seniority, applied in bidding for positions or jobs with preferred hours and rates of pay and in layoffs and recalls when there has been a reduction in work force; vacations, the extent of which depends upon their seniority in the service; holidays; and benefits as voluntary members in the Relief Department. The Railroad Retirement Act vests rights to retirement or pension benefits in those employees on whose behalf monthly payments have been made to the Railroad Retirement Board. (The plaintiffs, except Chisholm, and other members of their class, will be deprived of such rights of value under the terms of a union shop agreement unless they join one of the Defendant Unions within the times prescribed, and notwithstanding that such membership is not voluntary and is against their desires.)

15. (The defendant labor organizations have exceeded their proper authority as bargaining representatives of the members of their respective crafts, including the named plaintiffs and their fellow employees of the same class, by their demands upon the Defendant Carrier for a union shop agreement. Their demand for, and insistence upon, a union shop agreement is for their own interest and financial gain, is contrary to the interests of the class they represent and hostile to the expressed wishes and interests of a large number of employees. By seeking a union shop agreement, the Defendant Unions have not, in the following respects, among others, represented the plaintiffs and members of their class similarly situated (they being non-union or minority union members) without discrimination, fairly, impartially, and in good faith, but, on the contrary, have failed to discharge their obligation of complete loyalty to the interests of all the employees whom they represent.

(a) By their failure or refusal to give the plaintiffs and members of their class notice of, and opportunity for hearing upon, their proposal for compulsory membership in the Union.

(b) By their failure or refusal to consider the requests, expressions of views, and interests of the plaintiffs and their fellow employees similarly situated in their demands and negotiations for a union shop.

(c) By seeking to compel or coerce the plaintiffs, and their fellow employees similarly situated, to become members of the Defendant Unions against their wills and convictions, thereby sacrificing or obliterating personal and property rights of the minority for the benefit of Defendant Unions.

(d) By seeking the loss of the plaintiffs' jobs because they are not members of the Defendant Unions and for no other reason, and thereby bestowing their vacated jobs upon union members.

(e) By compelling the plaintiffs, and their fellow employees similarly situated, to involuntarily pay fees, dues, and assessments (the amount of which have been fixed without their consent or approval) to the Defendant Unions as a condition of employment and the opportunity to earn a livelihood.

(f) By compelling the plaintiffs, and their fellow employees similarly situated, to become and remain members of Defendant Unions against their wills, with the attendant obligations and requirements of union membership.

(g) By compelling the plaintiffs, and their fellow employees similarly situated, to be deprived of rights of value (vacations, seniority, holidays, relief department, etc.,) obtained by reason of their continued service with the Defendant Carrier, unless they join a union within the times prescribed, and notwith-

standing that such membership is not voluntary and is against their desires.)

16. (The consummation of the proposed unlawful and illegal agreement as demanded by the Defendant Unions would cause these plaintiffs, (except Chisholm) and other employees similarly situated, to suffer serious and irreparable damage and injury, including the loss of their right to earn a livelihood free of the necessity of joining a union or labor organization, and the loss of rights of value, privileges and benefits accrued to them by reason of their long employment with the Defendant Carrier for the sole reason that they are opposed to a union shop agreement. The plaintiffs have no adequate remedy at law and have suffered and will suffer irreparable harm and injury unless the defendants are permanently enjoined and restrained. The equity powers of this Court are adequate to afford the relief of a permanent injunction and should be exercised in the circumstances here revealed.

## CONCLUSIONS OF LAW

1. The plaintiff Chisholm is not a proper party and the action should be dismissed as to him.

2. The agreement proposed on 22 April, 1953, by the Defendant Unions for acceptance by the Defendant Carrier is invalid and illegal as contrary to the laws and public policy of the State of North Carolina.

3. The Defendant Unions have exceeded their proper authority as bargaining representatives of the members of their respective crafts by their proposals and demands for a union shop agreement. The Court has jurisdiction and power to issue necessary injunctive orders in order to prevent the sacrifice or obliteration of the plaintiffs' rights, and the class whom they represent, under the Railway Labor Act.

4. The agreement proposed on 22 April, 1953, by the Defendant Unions to the Defendant Carrier, if consummated, would deprive the plaintiffs, and members of the class whom they represent in this action, of individual property rights of value and liberties protected and guaranteed by and under the Constitution of the United States, the Constitution of the State of North Carolina, and federal and state laws, statutory and common.

5. The plaintiffs have no adequate remedy at law and have suffered and will suffer irreparable harm and injury unless the defendants are permanently enjoined and restrained. The equity powers of this Court are adequate to afford the relief of a permanent injunction and should be exercised in the circumstances here revealed.

6. That a decree should be entered herein, permanently enjoining and restraining the Defendants from the commission of the acts provided in the Temporary Restraining Order as issued by this Court on 23 April, 1953.

This the 5th day of November, 1954.

HOWARD H. HUBBARD, Judge,
Superior Court of North Carolina.

FINAL DECREE

This cause coming on to be heard at the November 1, 1954, Special Term of the Superior Court of New Hanover County, and the parties having waived a trial by jury, and testimony and documentary evidence having been offered by the parties, and the Court having made and filed its Findings of Fact and Conclusions of Law, it is therefore

ORDERED, ADJUDGED AND DECREED that the Temporary Restraining Order heretofore granted and issued by this Court on the 23rd day of April, 1953, be, and the same is hereby made perpetual and permanent, and that the Defendant Atlantic Coast Line Railroad Company and the Defendant labor organizations, thirteen in number, their

officers, agents, servants, employees and attorneys, be permanently and perpetually enjoined and restrained from:

1. Negotiating for, demanding, consummating, entering into or executing any agreement or contract calling for a union shop or similar arrangement whereby membership in a labor organization is made a condition of continued employment for the named plaintiffs and their fellow employees of a class similarly situated;

2. Inducing, encouraging, aiding, ordering, or causing employees of the Defendant Atlantic Coast Line to engage in a slow-down, work stoppage or strike as a means of forcing the consummation of any such agreement;

3. Ordering or causing a lockout of the employees of the Defendant Atlantic Coast Line, as a means of forcing the consummation of any such agreement; and

4. Aiding or procuring or causing to be done any of the foregoing acts which they or any of them have been enjoined or restrained from doing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants pay the costs of this action to be taxed by the Clerk.

This the 5th day of November, 1954.

HOWARD H. HUBBARD
Judge Presiding.

APPEAL ENTRIES

To the signing of the Final Decree herein, Defendant Unions except and appeal to the Supreme Court of North Carolina; notice of appeal given in open court; further notice waived. Defendant Unions allowed 60 days in which to make up and serve Statement of Case on Appeal; plaintiffs and defendant Railroad allowed 30 days thereafter to serve exceptions or counter-

case. Appeal bond fixed at $200.00.

HOWARD H. HUBBARD
Judge Presiding.

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DEFENDANT UNIONS' EXCEPTIONS TO
FINDINGS OF FACT OF LOWER COURT

1. To that portion of Finding of Fact #11, enclosed in parentheses, which reads as follows: "... The agreement further provided that an employee whose employment is terminated as a result of non-compliance with the provisions of the agreement shall be regarded as having terminated his employee relationship for vacation purposes, ..." the Defendant Unions except, for that this finding of fact is without competent evidence to support it.
(DEFENDANT UNIONS' EXCEPTION #22.)

2. To that portion of Finding of Fact #11, enclosed in parentheses, which reads as follows: "... The employee members of the Defendant Unions did not participate in the preparation of the proposed agreement, had not been advised of its contents, and were not furnished copies, ..." the defendant Unions except, for that this finding of fact is without competent evidence to support it.
(DEFENDANT UNIONS' EXCEPTION #23.)

3. To that portion of Finding of Fact #11, enclosed in parentheses, which reads as follows: "... The General Chairmen and executive officers of the Defendant Unions attended the conference but neither rank and file members of the Union nor a local negotiating committee were present, ..." the Defendant Unions except, for that this finding of fact is without competent evidence to support it.
(DEFENDANT UNIONS' EXCEPTION #24.)

4. To that portion of Finding of Fact #11, enclosed in parentheses, which reads as follows: "... The General Chairmen possessed no

authority from their respective Unions to make any substantial changes in the terms of the proposed agreement," the Defendant Unions except, for that this finding of fact is without competent evidence to support it. (DEFENDANT UNIONS' EXCEPTION #25.)

5. To that portion of Finding of Fact #12, enclosed in parentheses, which reads as follows: "... or canvass, ..." the Defendant Unions except, for that this finding of fact is without competent evidence to support it. (DEFENDANT UNIONS' EXCEPTION #26.)

6. To all of Finding of Fact #13, which is enclosed in parentheses, which reads as follows: "During the negotiation conference on 22 April, 1953, the Defendant Unions took the firm position that as the proposed agreement was the same as entered into with the Eastern Carriers, and as they had pared it down to the bone, they were dedicated to that proposed agreement. As a result of the statements made by the Defendant Unions in this conference and in previous articles, together with the existence of the strike ballot ready to be spread, the Defendant Carrier reasonably concluded that a strike would be called by the Defendant Unions if a union shop agreement was not soon consummated. The Defendant Unions would have exercised their economic strength and called a strike had a union shop agreement not been reached, and except for the issuance of the Temporary Restraining Order on 23 April," the Defendant Unions except, for that this Finding of Fact is without competent evidence to support it. (DEFENDANT UNIONS' EXCEPTION #27.)

7. To that portion of Finding of Fact #14, enclosed in parentheses, which reads as follows: "... The plaintiffs, except Chisholm, and other members of their class will be deprived of such rights of value under the terms of a union shop agreement unless they join one of the Defendant Unions within the time prescribed, and notwithstanding that such member-

ship is not voluntary and is against their desires," Defendant Unions except, for that this finding of fact is without competent evidence to support it.
(DEFENDANT UNIONS' EXCEPTION #28.)

8. To all of Finding of Fact #15, enclosed in parentheses, which reads as follows:

"The defendant labor organizations have exceeded their proper authority as bargaining representatives of the members of their respective crafts, including the named plaintiffs and their fellow employees of the same class, by their demands upon the Defendant Carrier for a union shop agreement. Their demand for, and insistence upon, a union shop agreement is for their own interest and financial gain, is contrary to the interests of the class they represent and hostile to the expressed wishes and interests of a large number of employees. By seeking a union shop agreement, the Defendant Unions have not, in the following respects among others, represented the plaintiffs and members of their class similarly situated (they being non-union or minority union members) without discrimination, fairly, impartially, and in good faith, but, on the contrary, have failed to discharge their obligations of complete loyalty to the interests of all the employees whom they represent:

"(a) By their failure or refusal to give the plaintiffs and members of their class notice of, and opportunity for hearing upon, their proposal for compulsory membership in the Union.

"(b) By their failure or refusal to consider the requests, expressions of views, and interests of the plaintiffs and their fellow employees similarly situated in their demands and negotiations for a union shop.

"(c) By seeking to compel or coerce the

plaintiffs, and their fellow employees similarly situated, to become members of the Defendant Unions against their wills and convictions, thereby sacrificing or obliterating personal and property rights of the minority for the benefit of Defendant Unions.

"(d) By seeking the loss of the plaintiffs' jobs because they are not members of the Defendant Unions and for no other reason, and thereby bestowing their vacated jobs upon union members.

"(e) By compelling the plaintiffs, and their fellow employees similarly situated, to involuntarily pay fees, dues, and assessments (the amount of which have been fixed without their consent or approval) to the Defendant Unions as a condition of employment and the opportunity to earn a livelihood.

"(f) By compelling the plaintiffs, and their fellow employees similarly situated, to become and remain members of Defendant Unions against their wills, with the attendant obligations and requirements of union membership.

"(g) By compelling the plaintiffs, and their fellow employees similarly situated, to be deprived of rights of value (vacations, seniority, holidays, relief department, etc.) obtained by reason of their continued service with the Defendant Carrier, unless they join a union within the times prescribed, and notwithstanding that such membership is not voluntary and is against their desires."

the Defendant Unions except, forthat this finding of fact is without competent evidence to support it.
(DEFENDANT UNIONS' EXCEPTION #29.)

9. To all of Finding of Fact #16, enclosed in parentheses, which reads as follows: "The consummation of the proposed unlawful and illegal agreement as demanded by the Defendant

Unions would cause these plaintiffs, (except Chisholm) and other employees similarly situated, to suffer serious and irreparable damage and injury, including the loss of their right to earn a livelihood free of the necessity of joining a union or labor organization, and the loss of rights of value, privileges and benefits accrued to them by reason of their long employment with the Defendant Carrier for the sole reason that they are opposed to a union shop agreement. The plaintiffs have no adequate remedy at law and have suffered and will suffer irreparable harm and injury unless the defendants are permanently enjoined and restrained. The equity powers of this Court are adequate to afford the relief of a permanent injunction and should be exercised in the circumstances here revealed," the Defendant Unions except, for that this finding of fact is without competent evidence to support it.
(DEFENDANT UNIONS' EXCEPTION #30.)

10. For the failure of the lower Court to find as a fact, as set forth in Defendant Unions' Suggested Findings of Fact, to wit, Suggested Finding of Fact #2, that: "Plaintiff Hudson, a train dispatcher, is represented by and a member of collective bargaining representative American Train Dispatchers Association; that Plaintiff Binkley, a carman, is represented by and a member of collective bargaining representative Brotherhood of Railway Carmen of America; that Plaintiff Rackley, telegrapher, is represented by and a member of collective bargaining representative Order of Railroad Telegraphers; that Plaintiff DeVane, a clerk, is represented by and a member of collective bargaining representative Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees," the Defendant Unions except.
(DEFENDANT UNIONS' EXCEPTION #31.)

11. For the failure of the lower Court to find as a fact, as set forth in Defendant Unions' Suggested Findings of Fact, to wit,

Suggested Finding of Fact #3, that: "Plaintiffs Tilley, Shepard, Darden, and Shannon, clerks, were represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees," the Defendant Unions except.
(DEFENDANT UNIONS' EXCEPTION #32.)

12. For the failure of the lower Court to find as a fact, as set forth in Defendant Unions' Suggested Findings of Fact, to wit, Suggested Finding of Fact #10, that: "On January 10, 1951, the President of the United States approved an Act of Congress (Pub. L. 914, 81st Cong.) amending the Railway Labor Act (U.S.C., Title 45, Section 151, et seq.) by adding Subsection Eleventh to Section 2 thereof. Said subsection provides that notwithstanding any other provision of the Railway Labor Act or any other Act of Congress or any statute or law of any State, carriers subject to that Act and labor organizations duly authorized to represent employees pursuant to that Act should be permitted to enter into agreements requiring, with certain limitations, that as a condition of continued employment employees shall become members of the labor organization representing their craft or class. For a period of twelve years prior to the aforesaid amendment to the Railway Labor Act, defendant unions had discussed in their lodge meetings, national conventions, and union publications the desirability of union shop contracts and amendatory legislation to permit such agreements," the Defendant Unions except.
(DEFENDANT UNIONS' EXCEPTION #33.)

13. For the failure of the lower Court to find as a fact as set forth in Defendant Unions' Suggested Findings of Fact, to wit, Suggested Finding of Fact #11, that: "From February 5, 1951, to the date of the commencement of this action, the defendant unions sought to obtain from the defendant carrier a union shop agreement within the limitations permissible under the Railway Labor Act. Such efforts were con-

ducted in accordance with the procedures of the Railway Labor Act, including notices in accordance with Section 6 of that Act, conferences with representatives of the defendant carrier, utilization of the services of the National Mediation Board, appearance before and presentation of the merits of their proposal to a Presidential Emergency Board appointed pursuant to Section 10 of the Act, acceptance of the recommendations of said Board and communication of said acceptance to the defendant carrier, and further efforts to negotiate a settlement extending over a period of more than one year subsequent to the report of said Emergency Board and up to the commencement of this action," the defendant Unions except. (DEFENDANT UNIONS' EXCEPTION #34.)

14. For the failure of the lower Court to find as a fact as set forth in Defendant Unions' Suggested Findings of Fact, to wit, Suggested Finding of Fact #12, that: "Throughout the period and the proceedings described in Finding 11, the defendant unions proposed as a basis for settling the dispute union shop agreements containing varying provisions, all within the limitations of the Railway Labor Act. Initially the union defendants requested a contract in the broadest terms permitted by the Railway Labor Act; after agreements had been negotiated with a few railroads, defendant unions asked the defendant carrier to enter into a similar union-shop agreement, which was more restrictive than the original proposal; after the report of the Presidential Emergency Board, defendant unions proposed a settlement in accordance with the recommendations of the report. The last form of union-shop agreement proposed by the defendant unions was identical in substance with the form of such agreement that had finally been made with many railroads throughout the country, including almost all the major railroads. Throughout the entire period the defendant carrier has steadfastly refused to enter into any kind of union-shop agreement," the Defendant Unions except. (DEFENDANT UNIONS' EXCEPTION #35.)

15. For the failure of the lower Court to find as a fact, as set forth in Defendant Unions' Suggested Findings of Fact, to wit, Suggested Finding of Fact #14, that: "Plaintiffs and other employees of defendant carrier represented in collective bargaining by defendant unions have, under the collective bargaining agreements between defendant carrier and defendant unions, seniority, holiday, vacation, and other rights. Under the Railroad Retirement Act (U.S.C. Title 45, Section 228(a), et seq.), there is vested in them retirement or pension benefits," the Defendant Unions except. (DEFENDANT UNIONS' EXCEPTION #36.)

16. For the failure of the lower Court to find as a fact, as set forth in Defendant Unions' Suggested Findings of Fact, to wit, Suggested Finding of Fact #15, that: "At the time of the commencement of this action, conferences were being held between representatives of the defendant carrier and the General Chairmen of the several union defendants on said carrier. A General Chairman is the highest official of a union defendant on the defendant carrier, elected directly or indirectly by the members of his union employed on the defendant carrier, and he is subject to supervision and control by the national organization. A General Chairman does not have authority to call a strike. Under the constitutions and laws governing the several defendant unions, various procedures must be followed, including a vote, before a strike may be called. While strike ballots have been printed, they have not been distributed, nor has authority to distribute them been obtained. If such authority should be asked for, it would require about three months under the union procedures before a strike could begin," Defendant Unions except. (DEFENDANT UNIONS' EXCEPTION #37.)

17. For the failure of the lower Court to find as a fact, as set forth in Defendant Unions' Suggested Findings of Fact, to wit, Suggested Finding of Fact #16, that: "Under the

form of union-shop agreement last proposed by the defendant unions, concerning which defendant unions and defendant carrier were holding conferences when this action was commenced, a non-member of a defendant union would have 60 days within which to comply with the requirements of such agreement, and, if he availed himself of the administrative procedures of the agreement, would have about four months before his employment would be terminated," Defendant Unions except.
(DEFENDANT UNIONS' EXCEPTION #38.)

DEFENDANT UNIONS' EXCEPTIONS TO CONCLUSIONS OF LAW OF LOWER COURT

1. To the lower Court's Conclusion of Law 2, which is in parentheses and reads as follows: "The agreement proposed on 22 April, 1953, by the Defendant Unions for acceptance by the Defendant Carrier is invalid and illegal as contrary to the laws and public policy of the State of North Carolina," Defendant Unions except.
(DEFENDANT UNIONS' EXCEPTION #39.)

2. To the lower Court's Conclusion of Law 3, which is in parentheses and reads as follows: "The Defendant Unions have exceeded their proper authority as bargaining representatives of the members of their respective crafts by their proposals and demands for a union shop agreement. The Court has jurisdiction and power to issue necessary injunctive orders in order to prevent the sacrifice or obliteration of the plaintiffs' rights, and the class whom they represent, under the Railway Labor Act," the Defendant Unions except.
(DEFENDANT UNIONS' EXCEPTION #40.)

3. To the lower Court's Conclusion of Law 4, which is in parentheses and reads as follows: "The agreement proposed on 22 April, 1953, by the Defendant Unions to the Defendant Carrier, if consummated, would deprive the plaintiffs, and members of the class whom they represent

in this action, of individual property rights of value and liberties protected and guaranteed by and under the Constitution of the United States, the Constitution of the State of North Carolina, and federal and state laws, statutory and common," defendant Unions except.
(DEFENDANT UNIONS' EXCEPTION #41.)

4. To the lower Court's Conclusion of Law 5, which is in parentheses and reads as follows: "The plaintiffs have no adequate remedy at law and have suffered and will suffer irreparable harm and injury unless the defendants are permanently enjoined and restrained. The equity powers of this Court are adequate to afford the relief of a permanent injunction and should be exercised in the circumstances here revealed," the Defendant Unions except.
(DEFENDANT UNIONS' EXCEPTION #42.)

5. To the lower Court's Conclusion of Law 6, which is in parentheses and reads as follows: "That a decree should be entered herein, permanently enjoining and restraining the defendants from the commission of the acts provided in the Temporary Restraining Order as issued by this Court on 23 April, 1953," the Defendant Unions except.
(DEFENDANT UNIONS' EXCEPTION #43.)

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AGREED STATEMENT OF CASE ON APPEAL

This was a civil action in which the plaintiffs, for themselves individually and in their representative capacity on behalf of all other persons of the class to which they belonged and were similarly situated as employees of the Atlantic Coast Line Railroad Company, sought to enjoin the defendant Atlantic Coast Line Railroad Company and the Defendant Unions, each of which is a standard railway labor organization organized in accordance with the Federal Railway Labor Act as the duly designated and authorized representative, pursuant

to the Act, of the employees of the defendant Atlantic Coast Line Railroad Company in their respective classes or crafts, from negotiating and executing a Union Shop Contract, under the terms of which membership in one of the respective Unions representing the class or craft of the employee would be a requirement of employment or continued employment by the Railroad.

After issue was joined and the Defendant Unions had set up their right to bargain with the Railroad and enter into a Closed Shop Agreement with the Railroad, under the provisions of the Federal Railway Labor Act (45 U.S.C.A., Secs. 151-152, and especially 152, Par. Eleventh), the case came on for hearing before Honorable Howard H. Hubbard, Special Judge, at the November 1954 Special Term of Superior Court of New Hanover County, and after the parties had offered their respective testimony and rested and the Defendant Unions had submitted proposed Findings of Fact to the Court who was trying the case by agreement without a jury, the Court entered its Findings of Fact and Conclusions of Law and the Decree of Record, from which the Defendant Unions have appealed to this Court, assigning error.

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STIPULATION OF COUNSEL (Waiving Jury Trial)

It is stipulated by all parties to this action that a jury trial has been waived, and it is agreed that the Court may hear the evidence; find the facts; declare the law thereon, and render judgment thereupon.

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MR. ROUNTREE: The Defendant Unions enter a Demurrer ORE TENUS for that the complaint fails to state facts sufficient to constitute a cause of action, in that it does not allege that the harm sought to be enjoined will inevitably occur forthwith or in the immediate future.

COURT: Ruling withheld for the present.

MR. BROOKS: The plaintiffs offer in evidence a Stipulation of Facts entered into between counsel for the plaintiffs and counsel for the defendant Unions; and the defendant carrier and the Exhibits attached thereto. As a matter of record I offer in evidence the Stipulation of Facts that has been signed, and indicate to the Court that there occur changes in paragraphs 2, 7, 9, 12, 13, and 14. Each of these changes is shown on the original copy in ink. (This Stipulation of Facts appears as one of Plaintiffs' Exhibits.)

MR. KRAMER: I want to object to some of those on the ground of relevancy and materiality. I have some additional objections to some parts of the stipulation and I object to the employment dates and the seniority dates of the individual employees. I have no objection to paragraphs 2, 3, 4, 5, 6, and 7. We object to all of paragraph 8. I do not object to paragraph 9. I object to all of paragraphs 10 and 11.

In connection with paragraph #11, I have additional objections to the general objections. These are simply articles appearing in a newspaper. It had not occurred to me we were going to try this case on what a newspaper happens to report as having happened. We do not question that these stories did appear in that newspaper, but the materiality of a newspaper reporting certain stories is beyond my comprehension.

I object to paragraphs 12, 13, and 14.

All of these objections are directed to allegations utterly irrelevant to any issue that can determine the outcome of the case.

COURT: I will reserve decisions on the objections now.

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PLAINTIFFS' EVIDENCE

B. F. BIGGS testified:

I reside in Wilmington, N.C., and I am office chairman in the office at Wilmington of the American Train Dispatchers Association, which is not a full-time job. There is just one person in the office designated to handle grievances, which is my job. During the time I am doing this, I also work regularly at the Atlantic Coast Line Railroad as Train Dispatcher, and I admit that I am a member of the American Train Dispatchers Association. There is one other local officer of that Union in Wilmington - Mr. Foster. He is a dispatcher in the same office, and he is General Chairman with the Union in that Union for the Atlantic Coast Line Railroad.

When Mr. Foster is unable to attend meetings he has been designating me to attend in his stead. There is no understanding but he has called on me when he was not able to attend. I do not recall the date, but I probably was present at a conference between representatives of the Unions and the Atlantic Coast Line on April 22, 1953.

With respect to what capacity I was acting in, I was only there just to have someone there who was an employee of the Atlantic Coast Line Railroad in the absence of Mr. Foster, serving for Mr. Foster who was not present. Other people at that conference representing the American Train Dispatchers Association were the Vice-President, R. M. Crawford from the National Office in Chicago. With respect to the document identified as Plaintiffs' Exhibit No. 1, which is a contract which it has been stipulated was presented by the Unions to the Atlantic Coast Line Railroad at a conference on April 22, 1953, and now handed to me, I recognize it as being one of the contracts so stipulated. My name is signed to it, whatever it is. I am referring to the place where the name D. A. Foster, as General Chairman, is

signed under the title "American Train Dispatchers Association." I signed that for Mr. Foster and affixed at the end of his name my initials: "F.B." As to whether it appears from plaintiffs' Exhibit No. 1 that this agreement was signed on behalf of O. H. Braese, Chairman, I say that I did not sign that. I signed this proposed agreement in the conference office of the railroad at the meeting, I think, but I would not say positively. I could not say where it was signed by Mr. Braese or on his behalf. As to whether I saw this agreement signed by any of the others whose names appear, I say that I was there when some of them were signing, but as to any individual signature, I don't actually say they signed their names because I was not sitting opposite them. Mr. Braese was not present in person at the conference on this occasion. I do not know where that contract was prepared.

MR. KRAMER: I would like to object to this testimony, and to the competency of it; there is no dispute that this contract was submitted to the Atlantic Coast Line.

COURT: I thought it was stipulated the contract was tendered, and was the contract the Union defendants wanted signed, or proposed to sign.

MR. BROOKS: That is correct. That is one of the points we are seeking to establish through our testimony, because apparently objection will be raised to that line of testimony. We contend in our complaint that one of the grounds upon which this agreement is null and void, and should not be entered into, and concerning which the injunctive processes of the Court should issue, is that these Unions are agents, or trustees, for all employees; their members and those who are not members, but who, under the Act, are represented by them as agents and as trustees, and they are obligated under the Act and the decisions of the United States Supreme Court to act under the authority conferr

upon them, and that the position taken by these Unions in trying to insist upon a Union Shop Agreement when that is opposed by many of the employees, and known by the Unions to be opposed by many of the employees, that constitutes an act in excess of their authority, and this testimony I am attempting to produce is presented to show that the rank and file employees have nothing to do with this contract, and did not even know it was being proposed. It was signed by many of the signatories before the meeting and brought here and put upon the table and they said to the Atlantic Coast Line: "Here it is, signed, sealed, and delivered." If there was ever an excess of authority exercised, that is it. It is also material in order to show the immensity of the problem facing our plaintiffs.

MR. KRAMER: We have stipulated that the defendant Unions were and are the representative bodies of the various crafts. As such they negotiate and execute contracts. There is nothing that requires them to inform the members of the craft just what they are seeking at any time. If at any time the members of the Craft are dissatisfied with the representatives they can be changed. All this is irrelevant.

COURT: I will permit the evidence at this time and allow you an exception to it. (DEFENDANT UNIONS' EXCEPTION No. 1.)

MR. KRAMER: May it be understood that the objection runs to all this line of testimony?

COURT: I prefer you say "you object."

WITNESS CONTINUES: It is correct that I do not know who prepared the agreement which is Plaintiffs' Exhibit No. 1. I don't recall the first time I saw the agreement, possibly it was a day or two before the meeting. Of course, all these things have to be discussed and I could not say just when was the first time that I actually saw the proposed agreement, but I think

it was several days before that conference. I did not participate in the preparation of the agreement, and I was not furnished a copy of it for my own file. I don't have a copy. I saw a copy but I did not have it. I could not say whether the terms of that agreement were ever discussed at any Union meetings held among our membership on the Atlantic Coast Line. I was not the General Chairman, and only acted in this particular case. I do not know whether it had been discussed at any meeting which I attended because I did not attend any meetings. Our Union does not hold meetings regularly.

The American Train Dispatchers Association on the Atlantic Coast Line does not have any regular meeting, so that this matter was never discussed at any meeting. As far as I know this agreement had never been circulated among our membership by mail, or otherwise distributed, prior to the meeting. I had the authority at the conference to agree to terms or conditions in this agreement. I could have agreed to changes on behalf of the American Train Dispatchers Association. I could have objected to the whole business. We had all signed it, and it can be taken as true that inasmuch as we had already signed it I approved it.

During the meeting I can't recall that I made any suggestions about any part of the agreement which was proposed. During the negotiations that took place each section of the agreement was discussed as to what it meant and how it would apply. The Atlantic Coast Line objected to the whole thing. As to whether my Union made any concessions to the Atlantic Coast Line's objections, I don't think we had any chance to offer any; before we finished the negotiations we were served with an injunction. As far as I can remember we adjourned, and they called us in the following day, 23 April, 1953, and when we got in, that was what met us - the Sheriff. On the first day that we met, I don't recall whether the meeting was all day or whether it was in the morning or the afternoon. I am

pretty sure, but I am not positive about it, that at times our Union has conducted a secret ballot among the members of the American Train Dispatchers Association employed by the Atlantic Coast Line and among the employees of the Atlantic Coast Line who are eligible to belong to our Union in order to determine whether or not the majority of them desired a Union Shop Agreement. I do not know when or what the outcome was. No group of the employees who are members of our Union ever requested any negotiations for the Atlantic Coast Line to have a Union Shop Agreement.

I have not seen anything of the kind like the petition which is offered in evidence as Plaintiffs' Exhibit No. 5, and which was signed by 55 train dispatchers. I saw a petition that was signed by possibly seven or eight men objecting to it from different Crafts whom they claimed they represented. I don't know how many people. What I saw was a photostatic copy of something, whether of the type of petition shown on Exhibit 2, or not, I don't know. I don't know and don't have any record of approximately how many employees of the Atlantic Coast Line were members of the American Train Dispatchers Association in December, 1950, and I do not know whether Mr. Foster has that information. That information is kept at the National Headquarters in Chicago. Mr. J. B. Springer, Secretary and Treasurer, would have it. That is where we send our dues. The dues of our Association are not routed through the Wilmington office, but they are sent directly to Chicago. We don't have any lodges here. There are so few train dispatchers. In this office there are four regular men; not enough to form a lodge. It is 200 miles to the next office. There are no lodges in our Union on the Atlantic Coast Line at all.

I do not know, but I cannot say that Mr. Foster does not know how many members of the American Train Dispatchers Association are employed by the Atlantic Coast Line. I don't keep

any records and I do not know of the existence of any records here that would show that.

The initiation fee for new members is $10.00 and the yearly dues are $37.00. Although it is provided in the constitution of our Union that assessments can be levied, there never have been any assessments since I have been a member and I have been a member since the organization on the Atlantic Coast Line in 1945, I believe.

MR. ROUNTREE: The defendant Unions move the Court to strike out all the testimony of Mr. Biggs' direct examination.

COURT: Motion denied. Exception.
(DEFENDANT UNIONS' EXCEPTION No. 2.)

CROSS EXAMINATION

As to the signing of the agreement which Mr. Brooks showed me, that was passed around the table from one to the other, and I don't know who signed it. I could not testify to the fact that I saw any one person sign it. I testified that the provisions of the Union Shop Agreement were not discussed at any meetings I attended. The Dispatchers did not have any meetings. They did not have any meetings other than lodge meetings. We have never had meetings of the Dispatchers since I have been working; I am sure of that. As I said, we are so far apart and all working; there were not enough not working to have a meeting, that is, a formal meeting. As to an informal meeting, we get together in the office. We have never had a meeting for the purpose of discussing any particular thing. As to whether I have discussed the Union Shop with any other dispatchers, or heard any other dispatcher discuss it among themselves, I say it has been mentioned. It has been mentioned when I was present. These discussions took up the terms of the Union Shop Agreement. I think everyone understands what it is. I testified that the Atlantic Coast Line objected to the entire contract that was submitted to them. Each paragraph was brought up and they (the Atlantic Coast Line Railroad) just turned everything down.

With respect to Mr. Brooks' question whether any vote was taken by the American Train Dispatchers Association on the Atlantic Coast Line, and their wishes concerning the Union Shop, I am not sure about that, but I think there was, but I am not sure. It would be a guess to say when there was such a secret vote, possibly maybe three or four months before this meeting of April, 1953. That is a guess, I do not know the outcome of the vote and I have never discussed it with Mr. Foster. I don't know whether the Train Dispatchers are the highest paid group of all 17 groups in their basic pay, but I believe they are among the highest. My basic monthly wage for straight time is approximately $490.00 a month, and the initiation fee in the Union is $10.00, and the annual dues are $37.00. In my entire experience there has never been any assessment at all.

I have never attended the National Convention of the American Dispatchers Association, but I have received reports of the proceedings at those conventions. I know Mr. Foster gets reports of the proceedings of those conventions. I am inclined to think that motions were made at a convention of the American Train Dispatchers Association to the effect that the organization seek a Union Shop or revisal of the Railway Act to permit a Union Shop, but I cannot say that positively. My inclination is to believe that such action was taken at conventions prior to the present movement. I did not see the petition that probably was circulated among Dispatchers to ask the American Train Dispatchers Association not to pursue their efforts for a Union Shop. I do not know any Dispatchers who signed it.

STIPULATION OF COUNSEL: It is stipulated that if D. A. Foster, General Chairman of the American Train Dispatchers Association were called to testify, that he would testify that in the year 1953 there were approximately 75 train dispatchers employed by the Atlantic Coast Line who were members of that Associa-

tion or eligible for membership therein. He would further testify that there are no records available to him in Wilmington to show the number of Union members in any previous year.

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J. F. WINTERS testified:

I am John Frederick Winters, residing at Florence, S. C., and I am General Chairman of the Brotherhood of Railway Carmen. My duties relate to that Union on the Atlantic Coast Line and that is a full-time job. I have in the past worked for the Atlantic Coast Line Railroad, and I still maintain my seniority as a Mechanic in Florence. I have held this position since October, 1938, and that position is the highest in the Union organization on the Atlantic Coast Line for the Carmen. I am responsible directly to the National Office.

Mr. Wooten, Mr. Winberry and myself were appointed a sub-committee to arrange a conference with the Atlantic Coast Line concerning the negotiation of a Union Shop Agreement. That committee was formed in Wilmington. We were all together here, and I think we were selected here for that purpose. I won't be certain of that, but I think that is right. It is stated in this letter that we met in Washington. That was prior to the formation of the Committee. That means that all the non-operating Crafts on the Atlantic Coast Line Railroad, and they elected a sub-committee. That sub-committee was to carry out the negotiations, to seek and obtain a conference date. Pursuant to the direction of that, our group sought a date for a conference, and about three days were set. Mr. Baker postponed it several times, but we did finally agree on April 22, 1953. I was present at that meeting. Grand Lodge Deputy Marnicio, a representative of the Carmen, was present beside myself. That is my signature on the Union Shop Agreement, which is Plaintiffs' Exhibit No. 1. That is the Union Shop Agreement that was proposed to the Atlantic Coast

Line by the Unions. I signed it as General Chairman, and immediately above my name appears the name of Irvin Barney, who is the General President of the Union. That agreement was signed when we were all assembled together, as representing a proposal we expected to present to Mr. Baker. It was not signed in the Atlantic Coast Line conference room. We all agreed that was the proposal we would present to the Atlantic Coast Line Railroad; it is not an agreement at all. It was signed in Mr. Wooten's office. Mr. Barney did not sign the agreement; there are initials by it. That is Mr. Marnicio. Mr. Barney was not present.

It might have been the 21st or 22nd of April, 1953, when the document was signed by Mr. Marnicio and myself. The conference was set at 2:30, I believe, in the afternoon; and we met early in the morning and discussed the proposal. All of the General Chairmen, and all the Grand Lodge Officers were thoroughly familiar with it. Some 90% of the railroad employees were already covered by the agreement. As to where that contract was prepared, it was negotiated on various railroads and on various carriers throughout the United States.

A somewhat similar agreement was negotiated on the New York Central. That was in August, and the same month the B. & O. signed one. Following that an Emergency Board was appointed when the other railroads would not go along, and... (Witness is stopped by counsel.) As to where that particular form of agreement was prepared, it was just one of the agreements that was in existence on some of the other railroads, and we adopted it as our proposal. This plaintiffs' Exhibit No. 1, which starts out by saying, "This agreement made this the day of , 1953, by and between the Atlantic Coast Line Railroad Company and the employees thereof represented by the Railway Labor Organizations, signatory hereto," was prepared in Mr. Wooten's office. The National Office had already signed it on all the other railroads

in the Country. I see that Mr. G. E. Leighty signed this agreement. He was not present at the conference on April 22, 1953. It is quite probable I was mistaken that it was prepared here but was prepared in Washington, because that is signed. I would have to qualify my statement to that extent. It was possibly prepared in Washington, and we signed it there because Mr. Leighty was not present here. As to whether I signed it in Washington, I know that I signed it. There is no question about that. The question whether I signed it here or in Washington, right at the moment I am not clear about that. I am satisfied it was signed all at the same time, so it is reasonable to conclude we signed it in Washington rather than here.

As to what date Mr. Leighty and I signed it, I went to Washington just a few days before we served notice on Mr. Baker for a conference. If you have the record where the Committee served the first notice on Mr. Baker for conference that would give you the date of the meeting in Washington.

When I came here, I had no idea I was coming as a witness, or I could have brought the files to give you the correct information. I think it was probably signed in Washington. There were no rank and file members of the Railroad Carmen at the conference on April 22. I was the only Carman, except the Grand Lodge members who were present. I think I have a copy of the agreement that was proposed in my file in South Carolina. Before the meeting I had copies of the New York Central Agreement and all the agreements. As to how often the various subordinate lodges of the Railway Carmen meet, some meet once a month and some twice a month; they must meet once a month under the Constitution. At every lodge on the railroad in its meetings the terms and conditions of the Union Shop Agreement were the subject discussed, either by me in person, or by the Local Chairman on information furnished him on that point. All

of them were given copies of the Law as amended, and they were kept strictly informed as to the progress of the negotiations. As to whether at those meetings they were furnished with copies of the agreement to be submitted to the Atlantic Coast Line, they were familiar with that. It was published in their Journal and in other labor papers and they were given printed pamphlets, so they were familiar with all the terms in the agreement, which was signed and presented to the Atlantic Coast Line Railroad. It was stated that those were the provisions that would be submitted, and upon that it was expected an agreement would be reached.

We have complete authority on behalf of the Railway Carmen to make any changes in the proposal which was submitted by the Unions to the Atlantic Coast Line. When we serve notice on the management and ask for a certain rule, we have authority to change it if that will get what we want, and that is often the case. Anyone knows who sits in on negotiations with an original contract when you wind up sometimes you don't recognize it.

As to whether any concessions were made in the negotiations held on April 22, 1953, by the Unions, they were not asked to make concessions. The only thing the company asked was how would this be applied, and how would that be applied, and we went down the line. We had not signed any agreement before we went into the meeting. We had signed a proposal. As to having signed the proposal before submitting it, and to whether we contemplated that that would be the agreement executed, I say we contemplated using every effort to negotiate the proposal into an agreement. We were hopeful of doing that. We know when we enter into negotiations something somewhere is subject to be changed, and we were not dead set on not making some changes if that change would work to suit, but we were definitely trying to get that agreement. The proceedings did not proceed to any length. We were only in there from 2:30

P.M. to 5:30 P.M. Normally we start the negotiations the next morning, but it was postponed until 2:30 P.M. the next day. There were only a few questions asked. I would say this: that the Union Shop is something the mechanical employees have sought for and desired for a great many years, particularly as there was a very effective Union Shop practice on this road for a great many years.

We hoped that through the negotiations commenced on April 22, 1953, our Unions would have a Union Shop Agreement as a result, but we could not tell. I do not know what we would have done if the Atlantic Coast Line had declined to agree to a Union Shop. That would be a matter to be determined by the employees themselves. The General Chairman had not agreed in advance as to what action they would take if the Atlantic Coast Line did not accede. We had not reached that point.

As to whether or not on any other line where our Union represents employees there had been a strike ballot because that particular carrier had refused to grant a Union Shop, I believe that there was one road where they started to spread the strike ballot, but the agreement was signed before the action was begun, and the vote was not necessary since the carrier there signed the agreement. At no time has a secret ballot been conducted among the members of the Railway Carmen employed by the Atlantic Coast Line Railroad or among the employees eligible to join that Union, to determine the desires of the employees to join our Union Shop. Their desires in that respect have been represented through the action of the various local lodges, and as later represented in our joint board system federation conference. That was the way the matter was handled. The members directed the Chairman to take certain actions. Each of our subordinate lodges passed resolutions asking for a certain action. We start at the Local in most instances. There is a subordinate Lodge in Wilmington.

From my testimony you might understand that in the minutes of the subordinate Lodge here in Wilmington there might be a resolution in which the members of that Lodge requested a Union Shop; but I would not say Yes or No. I don't know whether this Lodge presented one or not. I will just say resolutions were presented by some of the Lodges.

As to what is the amount of initiation fees for new members, I understand that changes when the Grand Lodge sits. We have a Grand Lodge Conference every four years, but at present the initiation fee is $15.00; and for helpers and apprentices it is $7.50. We also have a re-admittance fee when a man drops out of the Union and is re-admitted. That fee is now $25.00 for a mechanic for reinstatement and $20.00 for apprentices and helpers. This has been changed slightly. I don't remember the figures, but the initiation fee and the reinstatement fee are the same thing. That is now, but the Lodges have a referendum fee. The entire membership has to pass on these changes before they become effective. Monthly dues vary according to which Local Lodge one belongs. The maximum that is being paid on the Atlantic Coast Line is $2.50 for mechanics and $2.25 for helpers and apprentices. That, incidentally, will be increased, if they approve the law, by 25¢ a month the first of the year. No assessments have been made against the Carmen in the past year. There was a 50¢ assessment placed by the Railway Employees Department on all of the seven shop crafts, and our System Federation laws provide for a 10¢ assessment for the System Federation if that is necessary. It is limited to ten cents a year.

CROSS EXAMINATION

I first testified that I thought the proposal submitted to the Atlantic Coast Line on April 22, 1953, had been signed in Mr. Wooten's office, but when I saw Mr. Leighty's signature, I thought it might have been in Washington. I am reasonably familiar with Mr. Leighty's sig-

nature. It looks like Mr. Leighty's signature. Most of his signatures are stamped. My answer to Mr. Brooks' question was that at the hearing of April 22, 1953, no rank and file members were present. They are never present at collective bargaining sessions.

I am familiar with and recall the original Union Shop proposal I served on the Atlantic Coast Line. That was not the same proposal as that served on April 22, 1953; it was quite different. We did not hold rigidly to our original proposal. The original or first proposal was the more restrictive, that is, the original proposal was closer to the maximum permitted by the Law than the last one. We had conferences concerning that proposal but those conferences were not successful. After the conferences, I think we waited three or four weeks and heard nothing, and a tracer was sent in for reply, but nothing came and a second tracer was sent and nothing was heard and we referred the matter to the Railway Employees Department, and then we heard from Mr. Baker at Washington, and he asked a good many questions.

The Railway Employees Department is an Association of the seven Shop Crafts that work on railroads, and is the National system for those seven Crafts. So far as the Shop Crafts were concerned, after our conferences were unsuccessful we referred this for National or further handling to the Railway Employees Department. We were kept informed of the developments after it was referred to the Railway Employees Department. Very regular communications came in. Whether at any time the Railway Employees Department negotiated for the purpose of drawing a new Agreement with the Atlantic Coast Line Railroad and other railroads similar to the one signed by the New York Central, I recall that after the New York Central Agreement was signed they attempted to negotiate similar contracts. The B. & O. signed one shortly thereafter; and a number of short lines signed the very same agreement; such as the Lehigh

Valley. That Agreement was our original proposal. I have seen the report of the Emergency Board that heard the matter and I recall the recommendations they made. It was quite different from the New York Central Agreement. Whether the Railway Employees Department was willing to accept from the Atlantic Coast Line the Agreement recommended by the Emergency Board, I say that I think the Railway Employees Department has always accepted the Emergency Board's recommendations and in this case as well. Of that I am certain. That agreement was not obtained from the Atlantic Coast Line Railroad; at least not up to this date. I was familiar with the outcome of the negotiations with the Eastern Carriers and others.

COURT: How can contracts negotiated with other Railroads be material as to this?

MR. KRAMER: I understand the purpose of Mr. Brooks' questions was to the effect that our men walked in with the Agreement and said take it or leave it, and I propose to show we have constantly offered numbers of different agreements to the Atlantic Coast Line. We will concede that we have been since February 5, 1951, seeking to obtain a Union Shop.

MR. BROOKS: You have never signed a contract since 1951 that didn't have in it that you would all have a Union Shop?

MR. KRAMER: No, we have not signed such a contract.

COURT: Is that not going to the point I raised, that in conference the Union Defendants would agree to nothing but a contract that contained a Union Shop provision?

MR. KRAMER: If that means we have not dropped our request, that is true. We have not given up our request for a Union Shop.

COURT: Did any of these proposals leave out the Union Shop?

WITNESS CONTINUES: The mechanical employees have wanted a Union Shop for many years. By mechanical employees, I mean the Seven Shop Crafts; machinists, boilermakers, blacksmiths, sheet metal workers, electrical workers, railway carmen, and stationary firemen, and shop laborers. That desire has been expressed in their local meetings. It has been expressed in the System Federations and in their National Craft Meetings. The crafts have their conventions and the seven crafts joint together to wind up the business, and in each of the International Conferences.

A Union Shop request first went in as long ago as 1941, or about that time, but we withdrew it because we were advised at that time that we could not get it, and that that part of the request was withdrawn. I think that was in 1941. About that time the notice for vacation agreement and Union Shop was a joint petition. As to how long ago our organization determined to seek an amendment to the Act (Railway Labor Act) to permit a Union Shop, I say that some movement was started in 1948 or 1949, I believe it was. Our organization has not conducted a poll in our Craft to determine their individual feelings concerning a Union Shop, nor have we conducted any such poll on any other proposal submitted to the Atlantic Coast Line. We have never done it. It is not the practice. As to whether we determine the feeling of the membership of our Craft in any other way than you determine all of their proposals, I say that all proposals are handled in the same manner.

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L. L. WOOTEN testified:

I reside at 2516 Washington Street, Sunset Park, Wilmington, N.C. I am General Chairman of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. They cover all the members of Express and Railway Employees in the Country and that is a full-

time job. I have a local office which is my personal office and it is located at 214 Walnut Street, Wilmington, N.C. Other personnel in that office are an assistant and a part-time stenographer and a full-time stenographer. The part-time stenographer is Secretary and Treasurer. I am answerable to the A.C.L. Board of Adjustment, which is elected by the membership of the Atlantic Coast Line Railroad.

I am the highest Union official on the Atlantic Coast Line Railroad System to handle contracts and grievances. It is one of the duties of my office to handle System contract proposals on behalf of our Union with the Atlantic Coast Line, together with four other elective members. I was a member of the Committee elected by all the defendant Unions to try to get a conference with the Atlantic Coast Line concerning the negotiation of a Union Shop proposal which we had been attempting to do for some two years. The other people on that Committee were Mr. S. L. Winberry of the Maintenance of Way, and Mr. J. F. Winters of the Railway Carmen of America. That Committee was set up on March 27, 1953, in Washington, D.C. All the General Chairmen interested in this Union Shop matter appointed us the Committee in Washington.

All the General Chairmen interested in this Union Shop matter met in Washington at the request of the Chief Executives, due to the delay on the part of the Atlantic Coast Line Railroad, as the Emergency Board had made their findings and at that meeting they selected a Committee of two who lived in Wilmington, N.C., and one that lives in Florence, S.C., to try to get a conference date. We felt we had had a run-around several times for two or three years. We were instructed to get a personal interview and deliver a letter. Mr. G. E. Leighty was Chairman of the National Conference Committee. That group desired a conference for the negotiation of a Union Shop on various carriers, including the Atlantic Coast Line.

As a result of the appointment of this Committee on which Mr. Winters, Mr. Winberry and I served, there was eventually a conference with the Atlantic Coast Line. This conference occurred on April 22, 1953, at 2:30 P.M., or rather it was begun at that time and I was present. At that conference the Unions, including our Union, presented to the Atlantic Coast Line a proposed contract which has been offered in evidence as Plaintiffs' Exhibit No. 1. That proposal seems to be on my typewriter, and that is my signature to that proposal. Above my name appears the name of H. L. Lyon. There is the name George M. Harrison; that was signed by Vice-President Lyon.

This proposal was prepared in the Lodge Hall adjoining my office; it was prepared on my typewriter and it was mimeographed by our office force. It was prepared on the morning of the 21st of April, 1953, because there was very little preparation to it. The Eastern Agreement had been signed, which was quite different from our original proposal, and we put the Atlantic Coast Line in the place of the Pennsylvania Railroad. That was the only change made. We copied the rest of it like it was.

As to when Mr. Leighty signed it, Mr. Leighty's signature was there and signed by Mr. Keller. Mr. Leighty has never seen this document, the one the Atlantic Coast Line has; he did see the original Eastern Carriers' Agreement. On Plaintiffs' Exhibit #1 there is a reference that it was signed by someone for him because there is a "K" put opposite this by the Vice-President. Those Vice-Presidents that signed this Agreement were instructed to assist the General Chairman in making the Agreement and were there to sign the names of their General Presidents. There is an "L" there, that shows that it was signed by Lyon in the place of Harrison. He had authority to sign his name. Looking at the first page of signatures on Plaintiffs' Exhibit #1 in order to tell which of the people whose names appear thereon

actually attended the conference in person on April 22, I have already testified that Mr. Leighty was not present. Mr. Fox was not present - Michael Fox. Earl Melton was present. Mr. G. W. Wallace was present. Charles J. McGowan was not present, but a Vice-President representing him was present. Mr. Suits was present. Mr. John Pelhofer was not present, but Mr. M. C. Crawford was there and Mr. Pelhofer authorized Mr. Crawford to sign his name. I know this because I saw the telegram and heard a telephone conversation. There was some question about some other matters in the telegram, and he personally authorized the signing. Burns was present; Lanier was present; Mr. Duffy was not; Mr. Corbin was present; Mr. Barney was not; Mr. Winters was present; Mr. Anthony Matz was present. Mr. George M. Harrison was represented by Lyon. T. C. Carroll was represented by a Vice-President; Mr. Keller was present; Mr. Clark was represented by a Vice-President, but was not present. Mr. Cannon was present. Mr. Braese was represented by a Vice-President. Mr. Foster was not present, but Mr. B. F. Biggs signed Mr. Foster's name. Hugo Ernst was present but left that afternoon and this was signed by his Vice-President. Mr. Edmond Johnson was represented by his General Secretary-Treasurer.

Those various signatures on Plaintiffs' Exhibit #1 were attached about noon on April 22, 1953, in the hall adjacent to the office I have on the second floor. The reason Mr. Ernst did not sign it along with the rest, if it was signed by them prior to the meeting, was that he was there but left before we got to the signing. He was going to Florida and stopped here with his Vice-President. He was not in the negotiation conference.

As to whether it is customary when we present contract proposals to the Atlantic Coast Line to sign our proposal in the form of a signed agreement before we present it, I say that many times we discuss one or two rules and sign them.

It depends on what has been said beforehand. Sometimes it is handled by mail. I signed two this morning by mail. It is customary to present signed contract proposals to the carriers, that is, for the Labor Officials to sign them prior to submitting them. I have rewritten as many as 25 times. I had authority to make changes in the proposals submitted to the Atlantic Coast Line, and which I testified was the same used with the Pennsylvania Railroad, or the Eastern Carriers. But I did not have authority to withdraw our request for a Union Shop Agreement. We did not consider that; we had no idea of withdrawing it. We intended to carry through with the Union Shop, as far as the law permits us to go. The law permits us to strike under certain conditions. I could not tell you whether we intended to strike. I am only one member out of several thousand. Before any strike could be called our men would have to have a strike vote under the laws of the Brotherhood; and there could be a fact-finding hearing. That would take a year, and then it would be held up for another 30 days under the Labor Act.

QUESTION BY COUNSEL: I refer you to Plaintiffs' Exhibit #7, General Letter No. 454, written by you to the officers and members of your Union, dated April 1, 1953. In this paragraph you state: "All except three large and a very few small railroads in the Southeast have signed up Union Shop Agreements, and our time is now set for conference," and you go on to say, referring to your meeting in Washington, "After a full day of discussion it was decided that we must have a Union Shop Agreement on the A.C.L." Does that mean the decision of all the Unions, that is all the General Chairmen in Washington, that you had to have a Union Shop Agreement on the Atlantic Coast Line just as you had concerning a Union Shop on the other lines?

A I did not get a Union Shop Agreement on any other lines. I can't say what that means.

What I meant when I said we must have a Union Shop was that, I think the boys on the Atlantic Coast Line should not be treated differently from other people, and should not be riding a lot of fellows on our backs, and not be getting something from them. We feel that we are in a Democratic Country, and if I don't like the Administration, I can throw off my chains, and if anyone is getting the benefits of the wages of the Agreement, and are covered by the Agreement, they should not be allowed to sit there and take all the benefits, stab you in the back and pay nothing for it. We feel we are in a Democratic Country and these Unions are Democratic. I still feel that way. Whether that is the position of our Union, all I can say is that it is the position of some of us as far back as 1932, trying to amend the law generally, and when we did it in 1951, it had taken us 19 years to get it done. We got it done. It was the Unions that got the Amendment through, at least I think so.

QUESTION BY COUNSEL: Coming back to Exhibit #7, you say, "I am enclosing a copy of our report to the other General Chairmen and the Chief Executives so you can see just what the present status of this dispute is, and begin to get ready to back your committee in case that becomes necessary." What did you mean by that?

Sometimes it means extra expense; sometimes it means one thing and another. As to what it meant in this case, it could have meant a dozen different things. It could have meant whether or not people who are members of the Union advised their officers that they were back of them and were doing what they had instructed them to do over a long time. It could have meant it would need funds. As to what I meant, I say that I was not the author of that letter. One of the stenographers in my office prepared it. I did not dictate it. I wrote up the data for it. I don't know whether I wrote the language or not, but if I did not write it, she

(the stenographer) wrote it. In the last paragraph of that paper (letter) I state this: "We expect to meet Mr. Baker on the 14th and stay with him until the standard Union Shop agreement is signed or until he refuses to sign it in which case it will be referred to the membership of all the Cooperating Organizations at one time for concerted and Union action, which, of course, means the taking of a strike vote by all the organizations at the same time, and on the same issues." I proposed to request that action. That had not been agreed upon at the meeting of the General Chairmen in Washington. Each one had to act under its own law.

As to what authority I had to speak for the membership of all the Cooperating Organizations, I say that I did not have authority to speak for all of them. I had an idea it would be done, however. They did not give me that idea at the meeting in Washington. We had separate meetings first, and then the selective committees met, and then they opened the Grand Lodge. The officers who had charge of the meeting we had here.

Q Was there ever any meeting in Washington, Wilmington, or elsewhere of all of these Cooperating Organizations, or of the Chairmen of the officials thereof, where it was decided that if the Union Shop was not agreed upon on the Atlantic Coast Line, a strike would result?

A There was no agreement to that effect. There was a discussion, because they made us wait a little over two years. In the last paragraph on page 1 of Exhibit #7, I state: "We sincerely hope this latter will not be necessary." There I was talking about a strike vote. I also say there, "But we feel that the employees on the Atlantic Coast Line are entitled to the same treatment as other railroads in the Country and if we allow this carrier to run over us, then we cannot expect to get the things we are entitled to." That was written by me. I meant that I hoped it would not be

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necessary to take a strike vote, but if they (Atlantic Coast Line Railroad) did not give us a Union Shop, we would take one. We had taken seven since 1937. That would be my recommendation. As to whether our Union has done anything to change instructions to us on that subject, I should like to say that we have been under a restraining order since the afternoon of the 23rd of April, 1953. That is not the only thing that has kept us from spreading a strike vote. I would have to get instructions before I could do that. I would recommend it.

As to what I meant when I stated on page 2 of Exhibit #7, "We will keep you advised as the conference progresses so get ready to do your part when called upon to do so," I think I have already stated what I meant by that. I don't know what that might have been. It might have been additional funds, or getting in touch with someone to get their support, or it might have been a strike ballot eventually.

I read a labor publication known as "Labor" occasionally. I did not read that issue of "Labor." I read sketches. I am on the road a good bit and maybe I will find two or three copies when I get back, and I will read "Is Zat So," on the back page, and maybe not. I have two copies in my brief-case right now. Looking at that article in the right-hand corner of the paper to see if that refreshes my recollection, I cannot say whether I read that. This is May, last year (commenting on the paper). I could not say whether I read it or not. I recognize from the heading that it refers to the convention of last year. At this negotiation conference on April 22, 1953, Mr. Keller, Vice-President of the Railroad Telegraphers, was Union spokesman. Several of us did some talking, but he was the spokesman. Mr. Leighty was not present. Mr. Kincaid was the Vice-President of his organization. With respect to Plaintiffs' Exhibit #6, to which my attention has been called, which is a letter from me to All Concerned, and marked "SPECIAL," and dated

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March 27, 1951, where it is stated in the first paragraph, "This is another special invitation to you to join the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees," I would not say that it was addressed to all the employees of the Atlantic Coast Line that were not members of our Union at that time, but I would say that it was addressed to all those who were not members whom we knew.

As to whether the purpose of that letter was to invite such employees voluntarily to join the Union, I would like to say that in some prior Shop Agreements it was the contention of the employees that they had not been invited, and that the employees on one occasion contended that initiation fees should not have been charged, that was on the New York Central. It was to let everyone know the Union Shop was in progress of formation.

As to what I meant in that paragraph of Plaintiffs' Exhibit #6 where it is stated, "We want every person to want to become a member and come into the Brotherhood of their own free will, but if they just refuse to do this, then the agreement for Union Shop will likely catch them, and then they may not have a job on the railroad," I say that I meant just like what the Tax Assessor means when he calls the Sheriff and orders him to collect the taxes. I sold the property. I meant that if they did not come in voluntarily, that we hoped to have a Union Shop and, if we did, they would have to come in. I did not mean that as a result of the Amendment to the Railway Labor Act recently secured by the Unions that we would have a Union Shop. We meant that we would try to have it because it was now legal. It had been illegal prior to that, but after the Amendment was passed it would be legal. When I underlined the words "catch them," I meant what had happened on many other railroads at that time, where some waited until after the sixty days was out. I did not want to be told by any perso

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"I did not have an opportunity to join," and let the sixty days slip up on him. I cannot say definitely whether I had any success as a result of that letter in getting new members, because they did not send the membership to me, but to the different Lodges. The different Lodges do not notify me. I do not know whether my letter was successful in its purpose; maybe it was and maybe it was not.

I know I carried out my duty, or feel that I did. Those were not my instructions from my superior. That duty was imposed on me by the position I hold, which carries certain obligations and one of those duties is to try not to pick on or take advantage of anyone. Certainly, one of those duties is to try to get every employee of the Atlantic Coast Line to become a member of our organization.

The Brotherhood of Railway Clerks has at no time conducted a secret ballot among its members employed by the Atlantic Coast Line, or employees of the Atlantic Coast Line who are eligible to be in our Union in order to determine their desires with regard to a Union Shop, as we do not conduct secret ballots. We handle our affairs in the Local Lodge. I cannot say whether any Local Lodge has conducted such a ballot, I know there have been many, many discussions and actions taken by the Lodges. I know that the Constitution of our Union has a procedure where we can take votes by secret ballot of the employees on the system, but only for the election of delegates to conventions, and for strike votes. There has been no ballot on the Union Shop, as far as I know. In my capacity or office as General Chairman, if there had been a ballot on the Union Shop, I would not have necessarily known about it, because the law does not require the secret ballot on any matter with respect to it. It does require votes by Lodges and the System. I did not conduct any ballot or campaigns on the matter, except through correspondence, and "The Railway Clerk," which is put out once a month, and

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they conduct those at the different Lodge meetings. Many of those were sent to me. In these publications of our Unions I have advised the members that a demand for the Union Shop would be made but I have not advised the terms and conditions, because we did not know what they would be.

When you get in a conference with terms and conditions, you don't come out with one-half of what you go in with. We were advising them of what was proposed. That was in the form of these communicatcns from my office to the National Members and with respect to the bylaws proposed by the System Board, and in the Grand Lodge of "Railway Clerks," which is put out twice a month. With respect to whether there was a new bylaw passed regarding a Union Shop, I will say that there were resolutions by the System Board at its annual meeting regarding a Union Shop. They were furnished with the resolutions and bylaws. I remember what the substance of that bylaw was. I have it, and I shall read it. I am reading from the System Board bylaws of Meeting of August 2, 1951, Resolution No. 15:

"WHEREAS, The Brotherhood of Railway Clerks in cooperation with sixteen other Standard Railroad Labor Organizations has been successful in getting the Railway Labor Act amended to permit the negotiations and signing of Union Shop Agreements; and, WHEREAS, The several different System Boards in cooperation with the Grand Lodge and in cooperation with other organizations have negotiated with Carrier representatives and have completed such negotiations and turned the subject matter over to the chief executives of the respective organizations; and, WHEREAS, Efforts are now underway to get a Union Shop Agreement on all Carriers in the United States; therefore, BE IT RESOLVED: That this System Board go on record as approving the Union Shop and all its operations, and that we thank the Grand Lodge and especially Grand President Harrison for his great work in

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getting through the Congress of the United States an amendment to the Railway Labor Act permitting the negotiation of the Union Shop; and BE IT FURTHER RESOLVED: That this System Board urge all of the members under its jurisdiction to assist the System Board and the Grand Lodge in every way possible in securing Union Shop Agreements on all properties coming within the jurisdiction of this System Board; and BE IT FURTHER RESOLVED: That we urge the Grand Lodge to do everything in its power to get an early settlement of this very important matter so that we may put into effect, at the earliest possible moment, Union Shop Agreements on all the properties having contracts with this System Board."

That was unanimously passed by the Brotherhood of the Atlantic Coast Line Railroad. I am not and was not the author of that resolution. A resolution committee was appointed by me, and they regularly bring their resolutions before the Committee, and they, the Committee, pass or reject it. I have nothing to do with the resolution unlessthey come and ask my advice, and that I dislike to do. This resolution was adopted by the representatives of all the members of the entire System, of the Atlantic Coast Line System.

In December, 1950, there were approximately 350,000 employees in the Clerks Union. As to the employees on the Atlantic Coast Line in the Clerks Union in December, 1950, I could not tell you, because I don't keep the records. I do not handle the financial matters or the number of employees. I would say there were between 2500 and 3,000, but that is a guess. I do not have any estimate of how many members we had in April, 1953, because there has been a considerable reduction in forces in the last three or four years, at least a 10% reduction. Compared with the 2500 to 3,000 members, we had in 1950, we have had a reduction in forces of approximately 10%, but I don't think we have a reduction of 10% of the membership. We have had

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a reduction in our members, because of the terrific reduction in forces. They don't pay dues when they don't work. The initiation fee for Clerks is $10.00, and that covers the insurance also. The monthly dues including insurance is $2.80 a month.

We have had no assessments in recent years; not in the past five years. In the past ten years there was one assessment of $1.00 a month for five months, or a total of $5.00. As to the year that occurred, I think I was wrong; I think that was in 1942, and therefore that would not have been in the last ten years; it would be in the last twelve years. It is true that if the Union Shop Agreement is entered into with the Atlantic Coast Line and all the Clerks are required to join, that any member who takes a stand against the Union Shop Agreement would be expelled validly, but if we expelled him for that reason, he could stay there the rest of his life. We have not expelled members for that, so far as I know.

I do not know a Mr. William T. Harrison, but I have heard a lot about him. I did not sit on the Grand Council that judged his appeal.

CROSS EXAMINATION

As to the frequency of putting out circular letters or special letters, whatever they are called, I should like to say that the general letters which were presented yesterday are put out monthly, and have been for about 15 years. They are put out to the officials and members, and are sent to one member in each office. We have the proper address of the members in that office. In the event that I personally came to the conclusion that a strike was desirable, I would not have authority to call a strike, but if I decided that it was necessary the procedure, I would have to follow would be this: I would first get authority from my Adjustment Board to make the request for a strike, and that would have to be by at least a large majority before I took the action. If I got the approval of my Adjustment Board, I would then

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request the Grand President, setting out all the facts in a letter, that a strike ballot be spread, and he would then assign a Vice-President to try to come on the property and try to settle the conditions which brought about the dispute, and if he failed in that we would spread a strike ballot. We would then have one (a strike ballot) printed and circulated, which would take, according to how long the printers would take, maybe from 30 to 60 days.

After the ballots were printed, I would have to get the address of each member and either mail it to each member or to the District Superintendent to be distributed. We would also mail strike ballots to every person who is not a member, or deliver one in person. That is how long it would take to spread a strike vote. I testified yesterday that, beginning with 1937 we have had about seven strike votes. The actual strike vote takes generally around ninety days, and it generally takes, according to past records, from 90 to 140 days to know the result of a strike ballot from the time you decide to request authority from your Board of Adjustment for a strike ballot until the result of the ballot is known. After the vote is taken, under our constitution, a simple majority is not enough to call a strike, but it is required that 66-2/3% of all members voting vote for a strike. Any member not voting is counted as voting against it. If there is more than 33-1/3 against it, there would be no strike. If more than one-third vote against it, I can't call a strike.

So far as I know, with respect to our National Association first making efforts to obtain a Union Shop on American railroads, the first thing done officially was to get the law changed, which was started at the convention in May, 1939, at which I was present. It was the action of this convention that determined to go after the Union Shop, to get the law changed so it would be legal to have a Union Shop. Our convention is the highest authority

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of our organization. There are quite a large number of Clerical positions, or other positions, in the Craft that I represent on the Atlantic Coast Line which by agreement with the Atlantic Coast Line are excepted from the rules of our Craft. I think the last tabulation we had on this number made it run around 880 excepted positions. 880 Clerical positions are not subject to our agreement. I think that 850 Clerical positions would be more accurate, with respect to the Craft which our Union represents. These are positions, not employees, in them.

With respect to the Relief Department, I think that they have seven exempt positions from the Agreement. They work those people six days and don't give them a five-day week. Under the general proposal submitted in 1953 to the Atlantic Coast Line for a Union Shop, submitted in April, 1953, the so-called "excepted positions" would not have been covered by the Union Shop Agreement. There are something in the neighborhood of 850 such positions. I know the names of the plaintiffs in this action. They hold excepted positions. If they signed the Agreements submitted to them in April, 1953, that is, if the railroad signed it, the plaintiffs would not be covered by the Agreement and would not be subject to the Union Shop.

COURT: Which ones?

Mr. DeVane is one of them; he is a member of our Craft. I can't say about all of them. It is a fair statement that there are more excepted positions in the Crafts of our Union than such positions represented by other Unions. We have a pretty large number. Under the proposal submitted in April, 1953, to the Atlantic Coast Line Railroad, and if anyone was expelled from the Union for any reason other than non-payment of dues, he would not be subjected to dismissal. He would be exempt all the rest of his life and could sit there and pay nothing. The sole exception is that if he was expelled for non-payment of dues. I know of another of the

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plaintiffs, whose name is Poisson, although I do not know him personally. I have been told that at one time he did clerical work. He was not carried on any of our records, but I was advised when this came up that he was working in the Roadmaster's Office.

CROSS EXAMINATION By Mr.Barnhill, Counsel for ATLANTIC COAST LINE RAILROAD:

I said yesterday that there had been considerable delay in the Atlantic Coast Line's handling this matter. I intended to leave the impression that the delay had been peculiar to the Atlantic Coast Line. I said that there had been a two-year delay, from the time the case was filed and handled to the time that we were instructed to get an answer. I know when the Amendment to the Railway Labor Act was passed; it was passed on the first day of January, 1951. We filed our proposals after that to secure a Union Shop on February 5, 1951. At the time we filed the proposal we included in it a paragraph asking the Atlantic Coast Line to agree to National Handling, if it could not be settled on the property. We did ask for it. I suppose that the proposal was handled on a National basis. I have never received a reply from the Atlantic Coast Line Railroad. I know that there was a report of the Emergency Board. The Atlantic Coast Line did not reply to us. To my knowledge the matter was handled on a National basis, but as to whether or not the Atlantic Coast Line had done anything through the Committee, I don't know. I know that they did not advise me. We referred the matter for handling to the Chief of our Organization, Mr. Harrison, and I suppose that he handled it on a National basis.

I do not know the date of the Emergency Board report; I don't remember exactly when it was; it was sometime in the summer of 1952; whether January, 1952, would seem a little more correct, I can't say. I think that that is correct. Frankly, I have not paid it much attention. I read the report before it went to mediation. I

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have not checked to determine whether it is a fact that the other railroads were present except for the possibility of three railroads. As to how I know this delay was peculiar to the Atlantic Coast Line, I should like to say that what I had reference to was the delay of more than 45 days beyond the 90 days. I mean that I asked for a conference and we were not given a conference, and eventually we were all called together and we were personally directed to deliver a letter prepared. . . I say that we were not given a conference.

MR. KRAMER: We object to this testimony on the ground that it is completely irrelevant.
COURT: I think all of you are putting in evidence that is irrelevant. Overruled.
DEFENDANT UNIONS EXCEPT.
(EXCEPTION #3.)

I recognize my signature and that is my signature. I will tell the Court what that letter is. When the request was made on February 5, 1951, the law requires an answer within ten days. That is the Railway Labor Act, and a conference is required within 30 days. To fail to do that would be a violation of the Railway Labor Act. So, of course, the company did comply with the setting of a date, and I acknowledged its receipt and advised that the date for the first conference would be satisfactory. We held that conference, and we were told at that conference we would be advised of the result. As to whether that was 23 days and not two years, I say that I did not mean two years to get the conference. We asked for a conference very shortly after the Emergency Board report was filed. I understood that there were some National Conferences. As to when I myself asked for a conference, I don't remember; it was several months before we got a conference. It was not several months after the Emergency Board report that we asked for a conference. The reason we had the meeting in Washington was because we could not get a conference, and my Committee of three were told personally to de-

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liver that letter to Mr. Baker, and to no one else. He was in a conference, and said, "Leave it," and we said we would come back. I could not say without checking the record whether the date I asked them for a conference was March 27, 1953; I don't remember. This is a letter jointly signed by everyone in Washington on the 27th day of March, 1953, and which we were personally instructed to deliver to Mr. Baker. That is not the request we made for a conference. I think we had all made requests for a conference prior to that time. That was the letter prepared in Washington, and signed by the General Chairman, who instructed the Committee of Three to personally deliver it to Mr. Baker. I personally did ask for a conference prior to that date, I believe. That letter was written because of the delay in getting anything. I signed this letter.

MR. BARNHILL: I offer it in evidence.
COURT: You may identify it.
MR. KRAMER: We object on the ground that it is irrelevant and immaterial.
COURT: Overruled.
DEFENDANT UNIONS EXCEPT. (EXCEPTION #4.)

THE LETTER IS IDENTIFIED AS A.C.L. EXHIBIT #1.

The first step I take before I get a strike ballot is that I have to get permission from the System Board. I have gotten permission from the System Board to spread a strike on the Union Shop issue on the Atlantic Coast Line. I can't tell what dates that was. There have been so many spread. The second step I would have to take is to refer the matter to the Grand President with request. I did refer the matter to the Grand President with request to spread a strike on the Union Shop issue on the Atlantic Coast Line, but I do not remember the date of that reference. The third step that must be taken is to get permission to have a Grand Lodge officer assigned. I think that I got permission to have a Grand Lodge officer assigned on the Union Shop issue on the Atlantic Coast

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Line, but I do not know when I did this. The next step necessary to be taken was to spread the ballot and let them vote on it. We did not have to have the ballot printed. The Grand Lodge had them printed for me. That is part of their expense. That has already been done. I do not know when that was done. The strike ballot was actually spread on the Atlantic Coast Line as far as our organization goes. And I believe that it was spread for the other 16 organizations; but I can't answer for the other 16. I do not know when that was done. It is fair to say that all these steps that we have to take have already been taken. They were taken before the Emergency Board was appointed, but because there was to be a threat to traffic... (Witness stops.) What you show me is a copy of the strike ballot. That is a copy of the strike ballot which was spread.

MR. BARNHILL: We identify it as A. C. L. Exhibit #2.

I looked at the date; it is November 20, 1952, which was long after the Emergency Board had handed in its report, but I can't say positively. With respect to those excepted positions, it is true that I testified in the action which the Brotherhood brought against the Atlantic Coast Line, with reference to the refusal to bargain for these 850 employees, that I had approximately 100 members among that Craft. Whether they obtained counsel and attempted to intervene to prevent the Brotherhood acting for them, I don't know who had counsel. I know that a lawyer appeared before Judge Gilliam for half a year, and went to the Circuit Court of Appeals, and the Court ruled that this was an issue to be settled in the ballot box and not in Court. I do not think that I testified that I did not consult with any of those 850 employees, but point of fact I did not consult with them, but rather they consulted with me.

MR. KRAMER: Objection.

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MR. BARNHILL: I think it is a very significant point, with respect to those 850 employees. The situation is briefly this: 850 employees were all represented by the Brotherhood prior to 1947. When the certificate was changed and included them in the proper class they did not desire to be brought within the terms of the agreement.

WITNESS CONTINUES: I think it was considerably before December, 1953, or January, 1954, that I served a demand on the Atlantic Coast Line for a change in the Agreement with respect to the rules and working conditions of those 850 employees. I have served such a notice. We served a notice in accordance with the certificate of the Labor Board, as to who would be excluded from the shop agreement. I don't remember the exact number, but some were to be excepted. We went over the jobs, what they did, their hours of service, and tried to give the company an exemption that would protect them in all their work. There were a few that would be covered by the Agreement. I do not think it is true that all except the 80 would be exempted. As to what I think would be a correct number, if my memory serves me right, there was a large number that would be exempted from the Bulletin and Assignment rule. I will agree that there was a substantial number who would not be exempted, such as file clerks and some general clerical employees. As to whether some would be subject to the Union Shop Agreement, the Union Shop Agreement specifically provides that the employees subject to the Bulletin and Assignment Rule would be covered by the Union Shop Agreement. It would be a matter of negotiation. The day of the discussion on April 22, 1953, they discussed that feature.

Q Is it not true that you and your Counsel both stated that the Union Shop would not be willing to exclude these people from the Union Shop?

A I don't know what my Counsel stated.

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REDIRECT EXAMINATION

I did not testify on cross-examination by Mr. Kramer that when a strike ballot is spread it is spread among the members and non-members of the Craft, and that the outcome is determined by two-thirds of the members and non-members. I said it took two-thirds of all of the members, that two-thirds of the members must vote for the strike before there was a strike. If we sent it out to all the members and non-members, the way we would know who were members and who were not, is that they would sign their names and be checked off. In order for a strike ballot to be counted, the employee must sign his name to the ballot and we would have to check off his name to get the 66-2/3.

Referring to the Constitution of the Grand Lodge of my Craft, Plaintiffs' Exhibit #20, Page 108, in Article 2, Section 1, it does not provide that the strike ballot is to be submitted only to the membership; it provides only the membership shall be counted in the 66-2/3, or 66-2/3 of the membership must vote for the strike before it is spread. The non-members have always had the right to vote, but whether they vote for or against it does not affect the legality of the strike ballot; it must be 66-2/3 of the membership. While we send the ballot out to the employees who are eligible for membership, we pay attention to the votes of all, but under the law, whether there is a legal strike, is to be decided by 66-2/3% of the members.

RECROSS EXAMINATION

I understood that I testified that I understood the Atlantic Coast Line participated in the National Handling of the Union Shop; it was generally understood to be so, and some of the documents we received show that they were parties. I was told that some of those documents showed that they (the Atlantic Coast Line Railroad) joined the Southeastern Conference Committee, but I was not told that officially. I was never advised in writing. I do not have

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a copy of the Emergency Board Report with me.

STIPULATION OF COUNSEL: It is stipulated that the Atlantic Coast Line appeared before the President's Emergency Board on November 15, 1951, to investigate a dispute between certain Carriers under Federal Management, and certain of their employees, represented by 17 cooperating Labor Organizations, but that the Atlantic Coast Line appeared before such Board as an individual, and not as a member of the Southeastern Carriers Conference Committee.

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S. L. WINBERRY testified:

I reside at Mt. Olive, N.C. My position with one of the defendant Unions is that I am General Chairman of the Brotherhood of Maintenance of Way Employees, which is a full-time job. My office is at 315 Southern Building, Wilmington, N.C., and I work in Wilmington and live in Mt. Olive. Briefly, my duties are to represent the employees of the Maintenance of Way Department. I am representative in matters of collective bargaining with the Atlantic Coast Line, and I attended the conference in Washington, D.C., of all General Chairmen sometime in March, 1953, with reference to the Union Shop matters.

It is true that the testimony has been that as a result of that conference, Mr. Winters, Mr. Wooten and I were made a sub-committee to arrange a conference with the Atlantic Coast Line. As to any decisions made at that Washington conference concerning a Union Shop Agreement which was to be proposed to the Atlantic Coast Line and negotiated, our only instructions were that we were to deliver this letter to the management of the Atlantic Coast Line Railroad requesting a conference. There was no action taken at that conference as to what would be done in the event the Atlantic Coast Line did not accept our proposal, nor was there any discussion of the matter, so far as I recall.

Mr. Leighty was present at that meeting. I believe that I attended the negotiation conference with the Atlantic Coast Line on April 22, 1953. At that time there was presented to the Atlantic Coast Line a proposed Union Shop Agreement, which has been offered in evidence as Plaintiffs' Exhibit #1. I signed that proposal. As to where I signed it, I am not positive, but I believe that it was the morning of the day we began our conference.

Plaintiffs' Exhibit #1 indicates that the signature of the President of the Brotherhood of Maintenance of Way Employees is that of Mr. Carroll, who is the President. He was not present at the conference on April 22, 1953, but he was present at the conference in Washington, D.C. Another officer of our Union who was present here on April 22, 1953, was Mr. J. H. Hadley, the Southeastern Vice-President. I do not know when the proposal was prepared. If I remember correctly, the first time that I saw it was the morning before we began the conference. I read it over.

So far as I know, there had been no arrangements made at the conference of all the General Chairmen in Washington concerning who would prepare the proposal, and as to what its contents should be, so when I appeared at Mr. Wooten's office on the morning of April 22, 1953, I found there this contract proposal already prepared, and I had signed my name to it. I think that Mr. Carroll's name was already there when I signed it, but I am not positive. Mr. Carroll lives in Detroit, Mich. I do not know whether he had been to Wilmington at or about April 22, 1953. He had not been to my office. As to how often the local Lodges of our Union meet, I will say that part of them meet every 30 days and part every three months. The terms of the Union Shop Agreement had been discussed at some of the meetings of the subsidiary lodges, but I could not say that the type of terms that would be in the Agreement was discussed. It was merely a statement that

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a Union Shop proposal would be submitted. For several years the question of Union Shop was brought up in our Local.

I have not seen this type of Union Shop Agreement before, but I cannot say whether it is a fact that the members of the subsidiary lodges had not seen it. I would say that I had authority on behalf of our Union to make any changes in this contract proposal at the conference. I think that I would have the authority to withdraw our request for a Union Shop Agreement, but I better not answer that. You have got me wrong there because I am not sure. As a matter of fact, our instructions were to come here and negotiate for a Union Shop Agreement, but I would not say that they required us to stay here until we got one.

We came here with full expectations of making a Union Shop Agreement or being told that we would not get one. I could not say what we would have done if the Atlantic Coast Line had refused to grant a Union Shop Agreement. It is not a fact that we would have spread a strike ballot in that case, that is, if the Atlantic Coast Line had refused to grant a Union Shop Agreement.

I could not say whether the Brotherhood of Maintenance of Way Employees at any time has conducted a secret ballot among its members on the Atlantic Coast Line and employees who are eligible for membership to determine their wishes with regard to a Union Shop Agreement. I came in as General Chairman on January 1, 1953. No ballot has been taken subsequent to the time I came in. Prior to the time I became General Chairman I worked with the Atlantic Coast Line up to 1946, at which time I went to work for our organization. In April, 1946, I went to work for our organization as a System Representative; of the Employees on the Atlantic Coast Line. Of course, I was a member of the Union during that period from 1946, in point of fact since 1932. I have been a member at all times since that time.

I could not say whether at any time since January, 1951, the Union has conducted a secret ballot among its members to determine their wishes with regard to a Union Shop on the Atlantic Coast Line; for two years prior to my being elected General Chairman I was on the Santa Fe in the West, but I still continued my membership here. If a ballot had been mailed to me it would have gone forward to me there in the West, but I did not receive one.

I do not know whether our Union at any time since January, 1951, has conducted any kind of an informal poll or otherwise tried to canvass its membership on the Union Shop. As far as I know, I have received no such communication through the mail. I do not know whether or not our Union since January, 1951, has sent out any letters or circulars to its members with regard to the Union Shop issue, but there has been some sent out from our Grand Lodge generally concerning the Union Shop. As to whether any was sent to our System, I could not say about that, but I do not know of any.

It is provided in the Constitution of our Union that this newspaper, entitled LABOR, is to be sent to all members. All members of our Union received copies of this issue; that is, practically all of the members receive copies. That is paid for in their dues or assessments. I receive copies of that newspaper, and read the issues of that paper. I think that I would remember these issues of Saturday, May 2, 1953, and Saturday, May 30, 1953. With respect to the article in the issue of May 2, 1953, to which my attention is called, with the heading "Full Support of Union Shop Fight Pledged," I do not remember right now reading that issue, not right off, but I was not at this meeting. I would not know whether all the organizations were behind this move for a Union Shop on the Atlantic Coast Line, and that full backing would be given, that is, as to economic strength. I know that we were all in cooperation in securing the Union Shop Agreement. I do not know

that all would have cooperated with our economic strength if we had had an opportunity, that is, the 17 cooperating Unions. I do not know approximately how many employees of the Atlantic Coast Line Railroad were members of our union in December, 1950, nor would I have an approximate idea. I could not give an accurate figure for the number in April, 1953. Our membership records are carried at Detroit. We have a record here as to who some of the members are. We write approximately five to six hundred dues receipts through our office quarterly. Our dues are collected on a quarterly basis. That would not cover the members on the Atlantic Coast Line. We have 28 Locals we collect dues from and send in to the Grand Lodge, but some members send their dues directly to the Grand Lodge, and I have no record who they are. The initiation fees for new members are $5.00. The dues vary; some Local Lodges pay more than others. They run from $6.00 to $6.75 each three months.

CROSS EXAMINATION

It is correct that I testified that I had not seen Plaintiffs' Exhibit #1, which was our proposal of April, 1953, before I signed it, but prior to that time I had seen a copy of the Eastern Carriers Conference Agreement. I would say that Plaintiffs' Exhibit #1 is the same as the Eastern Carriers Conference Agreement except for the insertion of the name of the Atlantic Coast Line.

I do not have any knowledge of, nor do I know of any proposal the Brotherhood of Maintenance of Way Employees has made concerning which it took a secret ballot of the employees it represents whether in connection with the Union Shop or any other. So far as I know its conduct with reference to the Union Shop Proposal was the same as with other proposals.

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E. J. BUSCH testified:

I reside in Wilmington, N.C., at 6 Jackson Drive. I am assistant to the Personnel Officer of the Atlantic Coast Line Railroad Company, Wilmington. Briefly, my duties are the preparation of correspondence and assisting in the preparation of submissions to the Adjustment Board. In that capacity I attended the negotiations or conference between the Atlantic Coast Line and these defendant Unions in April, 1953; that is April 22, 1953. The conference was set for 2:30 P.M., and was held in the conference room of Building "D" of the Atlantic Coast Line. The following persons attended on behalf of the Atlantic Coast Line: Mr. W. S. Baker, Assistant Vice-President, A.C.L.; Mr. J. W. Weldon, Attorney; Mr. J. L. Hodges, Personnel Assistant; Mr. W. L. Dixon, Personnel Assistant; Mr. W. B. Seymour, Personnel Assistant; Mr. R. I. Christian, Secretary to Assistant Vice-President, and myself. The number of members who attended on behalf of the Unions was approximately 20 to 30 representatives of the Labor Organizations present. Mr. L. L. Wooten, General Chairman, of Railroad Clerks, served as spokesman for the defendant Unions. He was chairman of the sub-committee which had arranged the conference.

At the time the conference began Mr. Wooten announced that Mr. B. N. Kincaid of the Order of Railroad Telegraphers would act as spokesman. Thereafter, Mr. Kincaid served as spokesman for the Unions. Mr. Baker served as spokesman for the Company.

As to how the conference proceeded with specific regard to the presentation of contract proposals by the Unions, I will say that the conference was opened with the usual "good afternoon," and so on. After that, the organizations were asked if they had authority to act in behalf of the Unions in the negotiations of a Union Shop Agreement and the same question was asked of Mr. Baker, if he had authority on behalf of the Company to negotiate a Union Shop

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Agreement. The answers of the respective parties was "Yes." They all answered "Yes." After that question had been asked as to whether each spokesman had been authorized to represent the Company and the Labor Organizations, Mr. Kincaid announced the Organizations had prepared a draft of Union Shop Agreement, and he tendered a number of copies of the proposed agreement. Plaintiffs' Exhibit #1 is one of the copies that was tendered by Mr. Kincaid, and at the time it was submitted it had been signed by the signatures that appear thereon. After that the conference proceeded as follows: Mr. Baker, as chief spokesman for the Company, asked questions concerning each of the provisions of the proposed Agreement.

With respect to whether anything was said during the negotiations concerning the authority of the Union representatives to change the proposal, or whether the Unions were willing to make any changes therein, Mr. Kincaid announced that the proposed Agreement had been patterned largely after the so-called Eastern Carriers Agreement. He said that the Organizations were dedicated to that Agreement, and inasmuch as similar forms of Agreement were signed by other railroads, they would not like to execute an Agreement other than in the form that had been presented.

As to whether anything was stated during the conference concerning whether or not the Unions were willing to modify the terms of the proposal submitted, Mr. Kincaid stated that the agreement had been pared to the bone, if I remember the phrase, and that the Unions had dedicated themselves to securing the Agreement in that form. When we got to the provisions concerning a checkoff, Mr. Kincaid stated that such a clause would have to remain in the proposed contract, and that the organizations would not agree to a contract without such a clause. As to what, if anything, was said by the Unions or by Mr. Kincaid, or any of the others on behalf of any Union, concerning what

action would be taken in the event the Atlantic Coast Line did not agree to the proposal, Mr. Kincaid did say that they were dedicated to that (proposal) and would not like to change that form of Agreement. I cannot recall that any statements were made to the effect that a strike would be called, or that a strike ballot would be spread, or anything of that kind.

With respect to whether at any time either in that conference or prior thereto, or subsequent thereto, the defendant Unions have made any statement to the Atlantic Coast Line that they intended to strike if agreement was not reached for a Union Shop, I will say that we saw some newspapers, such as LABOR... (Witness is stopped.) As a result of the conference that was held on April 22, 1953, between the Atlantic Coast Line and the Unions, and as a result of other matters, the Atlantic Coast Line considered that a strike would likely occur in the event it did not accede to the Union Shop proposal. A prospective employee coming to work for the Atlantic Coast Line takes the following steps in order to form a relationship between the Coast Line as employer and himself as employee: He makes application, and if there is a position available he is offered the position. There is no formal plan, or going through a check list, to check over the particular points of employment. He has to complete an application form, which is filled out by him as to references, his age, address, and so on, and it is filled out by the prospective employing officer, and the man is examined by a medical examiner to determine his physical qualifications. These application forms are in writing. In obedience to a subpoena, I have the forms to some of the plaintiffs here. I have the form that was filled out by Mr. Chisholm, and the form that was filled out by Mr. Binkley. (Witness produces these forms.)

PLAINTIFFS OFFER the application forms of the plaintiff William R. Chisholm, being Plaintiffs' Exhibits 35 and 36, and also offer the

applications of the plaintiff John Monroe Binkley, as Plaintiffs' Exhibits 37 and 38.
Defendant Unions object to the relevancy of these Exhibits. Overruled. Exception.
(DEFENDANT UNIONS' EXCEPTION #5.)

Briefly, the Atlantic Coast Line Relief Department operates as follows, with regards to its employees: The Relief Department is set up on a voluntary basis for any employee of the Company. The employee contributes to the support of the Relief Department by payroll deductions. The membership is set up in specific classes, one through five. There is a different premium rate for each of these classes, depending on the coverage the employee wishes. The deductions, or contributions, made against employees include a death benefit only protection, and a benefit for his hospitalization and sickness treatment. The employee is afforded medical treatment in the Company's two hospitals, one of which is at Rocky Mount and the other at Waycross, Georgia. As to what percentage of the employees of the Atlantic Coast Line are members or belong to the Relief Department, a check made on December 31, 1953, showed 12,106 of the 19,026 employees of the Railroad, or 63.63%, were members.

The Relief Department does not have any connection, supervision or regulation under the Union Agreements between the Atlantic Coast Line and the various Unions; it is a department separate and apart from any benefits under the Union Agreement. In the event an employee is discharged from the Atlantic Coast Line, and he has been a member of the Relief Department, he would lose his benefits for hospitalization, but he may, if he so wishes and indicates, continue his death benefit only membership, but he would not be able to go to either of those hospitals operated by the Atlantic Coast Line and there receive the benefits that would be available if he was a member of the Department.

All notices are posted on the Bulletin Boards by Order of the National Mediation Board with regard to the provisions of the Railway Labor Act. I have a copy of notices posted in 1934, with regard to the Union Shops, and I have such a notice here. (Witness produces notice.) This sheet of paper identified as Plaintiffs' Exhibit #39 is the type of notice posted that I have testified about. This type of notice was posted during the latter part of 1934, and they remained posted on the bulletin boards from that time forward. They were posted in all employment offices of the various branches of the Atlantic Coast Line and remained posted.

THE NOTICE, PLAINTIFFS' EXHIBIT #39, IS OFFERED IN EVIDENCE.

During the period while these notices were posted, the Atlantic Coast Line observed the provisions therein. There are colored (Negro) employees employed in the yards and shops of the Atlantic Coast Line. As to how many, I made a survey and have a comparative statement. On the system, or rather within the confines of the coverage of the right of way, there are approximately 4,481 colored or Negro employees. That does not cover the colored employees on the System. They work in the yards and shops. They also work in locations we describe as freight stations, and so on. Some of those would be employed for the Maintenance of Way and would belong to the Maintenance of Way Union, and to the Railway Carmen's Union.

STIPULATION OF COUNSEL:

It is stipulated that injunction proceedings have been instituted and are pending in the following cases: The Santa Fe, in Texas, in Nebraska, against the Union Pacific; in North Carolina, against the Southern Railway; in Virginia, against the Norfolk & Western, The C. & O., the Seaboard Air Line and R. F. & P.; in Georgia, against the Southern Railway and subsidiary lines thereof; and in Florida a Declaratory Judgment proceeding brought by

the Unions concerning the Florida East Coast Railroad, and that in each of these cases, except the action involving the Florida East Coast, the plaintiffs sought a restraining order restraining the carrier and its own Labor Unions from entering into or carrying out a Union Shop Agreement.

MR. KRAMER: In only one other case besides this one does the injunction prohibit the entering into of a contract, and in some of the cases the injunction is in favor only of the particularly named plaintiffs.

CROSS EXAMINATION

I did not testify that at the conference of April 22, 1953, each side had a spokesman and that only the particular spokesmen did any talking; I did not mean that. Others also engaged in the talking to some extent, to a small extent. You understood me correctly to say Mr. Baker stated that he had authority at that conference to sign a Union Shop Agreement. He did not tell me that, but he did say that at the conference he had authority to sign a Union Shop Agreement. Neither Mr. Baker or any other representative of the company asked that any specific changes be made in the proposal submitted to them at that conference. The question was asked, "Before we reach an Agreement on such and such a thing, how about so and so," and in almost every case Mr. Kincaid would insist on the Agreement being signed as it had been presented. At the time of a person's initial employment by the Atlantic Coast Line, the applications, such as Plaintiffs' Exhibits 35, 36, 37, and 38, are the only papers given to a prospective employee to fill out at the time of his initial employment. He is not given any other application to execute at the same time. If he indicates a desire to become a member of the Relief Department, he is given an application so to become a member. As to whether it is only given to him only if he indicates a desire to become a member, I should like to say that he is given an outline of

membership in the Relief Department, and if he indicates a desire to become a member he is given an application. As to whether all applicants are asked the words, "If they want to become a member?" I don't know. All of the applicants do not fill out applications for membership in the Relief Department.

With respect to the Relief Department, no medical or hospital services are rendered or furnished at any other place than at Rocky Mount, N.C., or Waycross, Georgia. If the person does not live there he has to go there or get hospitalization elsewhere without it being paid for. As to whether the Relief Department is managed as a Department of the Atlantic Coast Line, I do not recall my testimony at the moment, but in a sense it is managed as a Department of the Atlantic Coast Line. The employees have a voice. There is a Board of Directors, and as to the number of members on the Board of Directors who are representatives of the management, I do not know the number. I am not qualified to say whether it is more or less than the representatives of the employees.

With respect to Plaintiffs' Exhibit 39, which is the notice I testified was posted in 1934, I testify now that they are still up at a good many locations. I can testify to my knowledge that they are still up in the four buildings comprising the General Headquarters at Wilmington. These notices quote verbatim Sections 2, 3, 4, and 5 of the Railway Labor Act. It starts: "Pursuant to the provisions of Section 2, Eighth, Railway Labor Act, as amended. . ." As to whether we also post, along with Exhibit 39, or copies of it, Section 2, Eleventh, or any part of Section 2, Eleventh, the answer would be: they were posted, but at the present time they are not posted. I know why they are not posted at the present time. The buildings were painted, and they were removed and were not put back, but Exhibit 39 is still up because it was in a glass enclosed case. They were all posted side by side. One came down at the painting and the other did not.

CROSS EXAMINATION

As a part of the benefits by the Relief Department, a part of an employee's salary is reimbursed when he is off for sickness. I understand that the Atlantic Coast Line makes some financial contribution to the Relief Department. There is a separate contract between the Relief Department and the members specifying what benefits they shall receive. Each member is given a copy at the time he becomes a member.

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J. M. BINKLEY testified:

I live at Wrightsville Beach, N.C., and I am 44 years old, and work at the Atlantic Coast Line Railroad, where I have worked for 18 years. I work in Wilmington, in the shops, as a car inspector.

I was one of the charter members of the Railway Carmen of America. About when that Local was formed here, I do not recall; it has been several years. That Lodge number, I believe, is 399.

I signed the Petition in opposition to the Union Shop which is in evidence as Plaintiffs' Exhibit #2; and I secured the signatures of other employees to that petition. I would say between 45 and 50 employees signed it at my request. These were employees who worked in the yards and shops. Some of those people who signed the petition were former members in our Union. I would say about 50% or better were former members. Some of the people I approached to sign the petition refused to sign it; I would say 10 or 15 refused to sign, but not more than 15. After I had the Petition signed, I believe I gave it to Mr. Tom Walker.

I am one of the plaintiffs in this case. As to why I am opposed to the Union Shop, I cannot see that there is any advantage to the emplcyee. I can't see any advantage to the employees or to the Railroad. It certainly takes the Brotherhood away from the employees who

don't want the Union Shop. I want the Union, and have supported the Union as much as anybody has, but I want them as a servant and not as a master, and if you have a Union Shop, the person that does not want to belong has it forced on him. I don't think he ought to be forced into it. I, as a member of the Union, am opposed to its requiring people to join it. I have not been afforded an opportunity to ballot on the matter; nor has our Union ever sent a ballot to me as to whether or not I wanted a Union Shop. I have never been sent any literature or circulars for a canvass of our thoughts on the matter. All we have here is word of mouth in the shops in conversation. You are correct in your understanding that I continue to believe in the Unions, with representation; but I do not want to insist on everybody's joining against their wishes.

CROSS EXAMINATION

I did not testify that I was now a member of the Union; I am not a member of the Union now. I said I was a charter member of the Union. I say that I support the Unions and will continue to support the Unions. I ceased being a member about three or four months ago.

At the time this action was begun I was a member of the Union. I was a member of the Union when that Petition was circulated. When this lawsuit began, I believe that I was a member at that time, that is, in April, 1953. You are correct that I testified that I collected about 45 to 50 signatures on this overall Petition which I got from Mr. Walker. Mr. Walker, in the Transportation Department of the Atlantic Coast Line, one of the operating Crafts. I believe that his position is Chief Clerk. He gave me this Petition to circulate while he was in his office. I am not sure of that; that is my recollection. After I had collected these signatures and returned the Petition to Mr. Walker, I am not sure whether I returned it to him or gave it to him. You are correct that I testified that I am in favor of

Unions as your servant and not your master. I am not a member now. I recognize that the Union makes our contract for us now. I cannot vote for their officers nor those who determine the Unions' policies. They are the ones who negotiated our contract. When I was a member of the Union, I voted for those that negotiated our contract. When I was a member they were our servants, and they still serve me.

I attended Lodge meetings when I was a member. The Union Shop was not discussed at those meetings on the nights when I attended. It has been several years since I attended a meeting, two or three years. I attended meetings before that quite often. Our Brotherhood of Railway Carmen have monthly meetings. I get copies of that. If the sheets of that magazine contained any information concerning the Union Shop, I did not read it. I get copies of LABOR. LABOR had stories concerning the Union Shop.

I was one of the signers of the affidavit attached to the Petition in this case - the Complaint. At that time, even though I was a member of the Union, I did not say that the execution of a Union Shop Agreement would hurt me. It takes the privilege away from the man or woman who works for the Railroad and does not want to belong. As to how the execution of a Union Shop Agreement would hurt me as an individual, I do not think that it would hurt me as an individual, but sooner or later if it hurts the other fellow, it would hurt me. Anything that hurts the other fellow will hurt me. At one time I was an officer of the Brotherhood of Carmen's Union in the Local. I believe they call it Shop Stewart, or Shop Chairman; that was my office. I did not participate in the circulation of any strike ballots. I do not have the slightest idea as to how long it took to get a strike ballot of all the Carmen on the Atlantic Coast Line. As to when I decided to bring this action, I talked to quite a few of the men at the shop and asked how they felt about it when I heard about it, and they had

the same opinion that I did. As to when I decided to bring this action, I do not recall the date, but it was approximately during last winter. We did not have a meeting at that time; we were just talking to the fellows in the shop. They are not co-plaintiffs with me. I do not know whether there was a meeting of the fellows in the shop that thought like me. I believe I know most all the 45 or 50 people on the System that were on the Petition.

I do not know exactly when I collected the signatures, but I believe it could have been last fall or during the winter. I mean last winter. Mr. W. T. Howes was not one, but Mr. L. G. Herring was one who signed the Petition. Mr. M. C. Boyette was not one, I believe. Mr. L. E. Ansco was one of the signers, and I believe Mr. O. L. Garner was one. I do not think that Mr. W. V. Miller was a signer, and I do not know whether Mr. William O. Tush was a signer because I do not know that name. I do not believe I know that man named Robert J. Herring. I do not think J. H. Edwards signed it. I don't know that Mr. Bedsoe signed it. As to Mr. George W. Dance, I do not think he was in on it. I do not recall seeing Mr. B. E. Pridgen. I don't know that Mr. R. W. Veeves signed it, and I do not recall the name S. V. Vosnoch. Mr. J. D. Sellers was not in it, nor was Mr. T. F. Kees. I think Mr. W. F. Goodby signed it. I do not recall the name Mr. V. S. Varnum, and I could not say with respect to Mr. G. R. Ezzell. I do not recall the name H. M. Wilson, or L. A. Bordeaux. I do not recall the name A. T. Dombwski, nor do I recall the name W. M. Rhodes. Harry Furrell did not sign it. I do not recall C. O. Lewis, and I do not recollect whether G. T. Savage signed it. I do not think that I saw J. A. Pridgen.

As to what I told the four men about whom I was asked when I presented the Petition to them for signature, I say that I read the caption at the top of the Petition to them, but I do not know what I said to them, but I read it to them.

Mr. Godley signed that, but he has changed his mind, and I want him to change his mind if he wants to. I want him to have the privilege of changing his mind like anybody else. I do not recall the exact time since the Carmen have represented our Craft on this railroad. I would say that the Carmen have represented our Craft on this railroad for 10 or 12 years; that is a guess. I think they have represented us since before 1941. Our wages are more than double since then. I do not think that it has been quite a year since I have not been a member of the Carmen's Union, but I do know that the Union has been trying to obtain additional conditions for us. I know that they are spending large sums of money in these efforts, at least I imagine so, and I know I will get the benefit of those efforts, as well as will the other members.

REDIRECT EXAMINATION

The reason that I am not now a member of the Union is that I have been suspended for non-payment of dues, but I intend to apply for reinstatement.

RECROSS EXAMINATION

I have not been expelled, but I have been suspended. The Secretary-Treasurer told me that I was suspended.

MR. KRAMER: I move that the Complaint be dismissed as to this plaintiff, who has testified that he would not be hurt, but that he was suing because he thought other people would be hurt.

COURT: In view of the fact that there might be some indirect harm to this man in the future, is he not entitled to some injunctive relief?

MR. BROOKS: Yes, sir, as a member of a class; the degree of harm as of this date; he is not a member of the Union.

MR. KRAMER: He is a member today, and has not been expelled; he was suspended. At the time of the signing of the Complaint he was still a

member, and still is.

COURT: I will withhold my ruling for the present.

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W. R. CHISHOLM testified:

My address is Masonboro Sound, about ten miles out of the City of Wilmington. My age is 66. I work for the Atlantic Coast Line as a Clerk in the Auditor of Car Service Accounts, and I might add that I am also the head of the Bureau known as the Local Record Bureau. We keep track of System cars on the line. That is the work of this particular Bureau.

It is true, as shown in the Stipulation of Facts, that I have been continuously with the Atlantic Coast Line since 1917. I am not a member of that Union now. I joined that Union, I think, in 1919, when I got back from the Army, and just dropped out. I have not been a member in the last 15 years, nor do I have any present intention of rejoining the Union. I am one of the plaintiffs in this action, and I signed this petition entitled "In Opposition to the Union Shop," which is in evidence as Plaintiffs' Exhibit #2. I was asked to circulate the petition in our office and make it available for everyone to see and sign if she or he chose to do so. I did not personally pass it along but asked one of the others to take care of it for me. Let me explain that. We are all stationed two people to a desk, one on each side, and the petition was circulated from one to the other, and there was no pressure brought. We exercised our own will in the matter. I signed the petition because it was in regard to this Union Shop, and I objected to it, and naturally I wanted to so express myself by signing it. I should like to clarify my position. There are more elements involved in this question than the Railroad and the men. It is a matter of personal liberty. Under the Government and Constitution of the United States, I feel like I am an individual; and it sets certain terms. Free men of voting age have the right to exer-

cise that choice, and such men should not be denied the right to say whether or not they have to join a Union in order to hold employment.

As to whether I have ever had the opportunity to vote on whether or not the Railroad Clerks should negotiate a Union Shop Agreement, I say that I voted in one election which was held here, but I could not tell you the purpose of it, but I think the records will show that it was to determine whether or not the Brotherhood of Railway Clerks and other Crafts should represent the employees. I have never voted on the precise issue of a Union Shop; no such opportunity has been afforded me.

As to whether I am dependent on my job at the Atlantic Coast Line for my livelihood, I will say that I have got to work, and I am dependent on employment. I do not have any independent income. With my long experience in the railroad business, I could not answer whether I could find available employment in this area if I had no work at the Atlantic Coast Line; but I would say that I would seek other employment; I would be forced to. As to whether I could get other work in this area which I am competent of doing, I say that I spent practically all my life in the Clerical work of railroads, and all my training is in that. I mean my special training. I would be worth more to a railroad employer. What I would be worth to some independent concern or individual in other lines of endeavor, I don't know, because I don't have the education, or training rather, for it. I could not do as well financially in other employment as I am able to do in the railroad. I am satisfied with my working conditions at the Atlantic Coast Line, and as far as I know my work is satisfactory to the Atlantic Coast Line, at least there is no complaint.

CROSS EXAMINATION

I testified that I had been working for the Atlantic Coast Line since 1917, except for a short period during World War I, and I think at

that time they (the Railroad) just loaned us to Uncle Sam. I am a plaintiff in this action on behalf of myself and other people not in this case. I think that is the way it is drawn. I do not know whether the employees of the Atlantic Coast Line Railroad were required to belong to the Unions in the last 1920's and the early 1930's.

My employment with the Atlantic Coast Line is a Clerk in the Auditor of Car Service Accounts. I am the leading Clerk of the System's Record Bureau. We keep a record of all System cars, no matter if they leave the United States or where they are, and on that we collect money for the use of our cars. My position is not subject to the Bulletin Rule, that is, it is not filled by bids from the Seniority Roster. I have not read the proposal sought by the defendant Unions on April 22, 1953, but it is my understanding that it was published and circulated that there would be a provision included in it for Union Shops. That is why this action was taken. I know that such a provision would eventually apply to me. My position is a fully excepted position. There are two positions, one subject to the terms of the present contract, and the other is an excepted position. I am in an excepted position.

My attention is called to Section 2, Plaintiffs' Exhibit #1, which I read as follows: "This Agreement shall not apply to employees while occupying positions which are excepted from the Bulletin and Displacement Rules of the individual Agreements, but this provision shall not include employees who are subordinate to and report to other employees who are covered by this Agreement. However, such excepted employees are free to be members of the Organization at their option." At the present time if this agreement were to be accepted it would not affect me, but let me add that it has been contemplated to install machines to do the kind of work I do. If they are installed my job disappears, and the only redress I have is to go

back to the basis of my contract. Although that is not the present condition, I am trying to take care of the future, too. If that system is adopted my job would fade out. I am 66 years old and I am eligible for a full annuity under the Railroad Retirement Act.

COURT: That does not mean that he would get the same wage?

MR. KRAMER: By no means.

I testified that I signed a petition which is in evidence as Plaintiffs' Exhibit #2, I think. Mr. Sutton sent it down to us. Mr. Sutton is an employee of the Atlantic Coast Line, and he is the head of the Committee that organized this opposition to the Union Shop proposal. I can't answer concerning who asked me to circulate the petition, because I do not know. Mr. Sutton sent the petition down to me for the purpose of circulating them, as we do any petition. After I had finished with the petition, I sent it back to Mr. Sutton. I do not know Mr. Sutton's title, but I think that he is one of the excepted boys, too. As to whether I have always been satisfied with my wages and the treatment the Atlantic Coast Line gives its employees, I say that there were plenty of times that I could have used more money, but I could not do better elsewhere. I did not bring any lawsuits to require the Unions and the Railroad to do better for me; the Atlantic Coast Line and I at that time were individuals. I asked them for a job and they gave me one. The only term in my employment to which I object is the term that the Unions are trying to obtain requiring that the Carrier terminate employment of an employee who does not belong to the Union. The thing which is called a Union Shop. If a man does not join it and pays his dues he is without employment. If the Atlantic Coast Line enters into it, they are bound to dismiss me, to dismiss anybody that is subject to it but does not pay the dues.

MR. KRAMER: I move that the Complaint be dismissed as to this plaintiff who had no interest in this matter at the time and still does not.

COURT: I will retain the motion for future ruling.

REDIRECT EXAMINATION

I understand that it is true that I am eligible for membership in the Railroad Unions. My testimony is that as of this day I am excepted from the Bulletin provisions of the Agreement with the Unions. I understand that the Union asked and sought a contract that would include what we call a Check Clerk, which would include me, and would also include the Chief Clerk. It would wipe out the exceptions, except the Department Heads and the Assistant Department Heads. I do not know whether I have ever been advised by the Unions that they except me from Bulletin, or excluded me. But I do know this: That I was in at the fight and listened to the testimony that was taken at that time. That was the case that went to the Circuit Court of Appeals as to whether or not people in my category were subject to being included with the other Clerks.

RECROSS EXAMINATION

I cannot give you the exact date since which I have occupied an excepted position, but I would say that that date was around 1925, that is for approximately the last 19 years I have been in an excepted position.

MR. BROOKS: We have a number of witnesses available who signed the petition, Plaintiffs' Exhibit #2, but their testimony would be merely cumulative to that offered here, but they may be called if the Unions want to examine, or the Atlantic Coast Line wants to examine more, but we see no need of filling the record with their opposition to the Union Shop, but if the defendants would want some of them called we would be glad to do so. Otherwise, we propose to rest our case with the understanding that if

Mr. Barnhill goes into these excepted cases, we could go into that.

COURT: They are not party plaintiffs, but people who signed the petition.

MR. BROOKS: Yes, sir, and their testimony would be merely that they did sign it and are opposed to the Union Shop, and have not voted on whether they wanted it, and are members of the Craft represented by the Union.

PLAINTIFFS REST.

MR. KRAMER: I move to dismiss the entire case as of nonsuit. I move to dismiss:

(a) As to the plaintiffs Hudson, Binkley, Rackley and DeVane, as shown in paragraph 6 of the Stipulation. They are presently members of some of the defendant Unions, and therefore, even if we assume as true all the allegations of fact and conclusions of law, they could not be hurt by the contract proposed by the defendants.

(b) I move to dismiss as to Chisholm on the grounds that he occupies an excepted position and could not be hurt by the contract.

(c) I move as to the other plaintiffs as there was no evidence tending to show they would be hurt by the contract complained of.

COURT: I will overrule the motion now, and we will go ahead.

DEFENDANT UNIONS EXCEPT. (EXCEPTION #6.)

MR. McLENDON: We would like to withdraw our announcement that we had closed our case, and consider it overnight, and it might result in our offering a little further evidence.

COURT: Motion allowed.

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EVIDENCE ON BEHALF OF PLAINTIFFS CONTINUED:

E. J. BUSCH testified:

It is correct that following the decision of the Court of Appeals, according to the records in the Personnel Office, that, as to the 850-odd employees, negotiations were resumed to determine the working rules and agreements concerning those employees. The Brotherhood of Railway Clerks has submitted to the Atlantic Coast Line a proposal concerning those employees. In those proposals the Brotherhood seeks to except from the Bulletin and Displacement Rules certain positions. Those positions, according to their proposals, are those positions located in the office of the President, the Vice-Presidents, the Assistants to the President, the Assistant Secretary, the Secretary, the Treasurer, and the Assistant to the Vice-President, the General Manager, and the Chief of Personnel. And that, with the exception of a part of the Law Department in Tampa, Fla., all of those positions are located in Wilmington, North Carolina.

As to how many positions those exceptions cover, a list gleaned from the records show that there are 92 such positions, none of which would be covered by the Bulletin and Displacement Rule. Among the named plaintiffs, specifically Mr. Chisholm, he is not covered by the requested exceptions of the Union in its proposals. It is correct that the Company (Atlantic Coast Line Railroad) has made a counter-proposal to the Union concerning the contract. In the Company proposal the Company has not sought to except from the Bulletin and Displacement Rules Mr. Chisholm's job. These negotiations are still pending. The negotiations were more or less arrested.

CROSS EXAMINATION

The date of the Unions' proposal to reduce the number of exceptions was January 13, 1948, almost seven years ago. I don't recall the date of the Carriers' counter-proposal, but it was the early part of this year. I stated that in the Carriers' counter-proposal Mr. Chisholm's

job would not be an excepted position. I was not understood correctly if it was thought that I said that the counter-proposal was made by the Company about six years after the original proposal. I did say that the counter-proposal was made this year and that would be about six years after the original proposal. These negotiations are now suspended. The last conference proposal was for February of this year.

CROSS EXAMINATION

As to whether the Union representatives gave us assurance they would be back, I will say that I was not present at the meeting, and I have not examined the Record on that point.

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J. M. TILLEY testified:

I live at 15 Wrightsville Causeway, which is a portion of Harbor Island, and I am one of the plaintiffs in this action. In March, 1953, I was in a position which is called "per diem" Clerk. There has been no change whatsoever in my general duties since that time. In March, 1953, and subsequent thereto, I have been eligible for membership in the Brotherhood of Railway Clerks, which has been the bargaining representative of the position which I have filled. I was not a member of the Brotherhood of Railway Clerks in March, 1953, or subsequent thereto. I have never been a member. The position which I occupied in March, 1953, and which I have testified I have continuously filled subsequently thereto is subject to the Bulletin and Displacement Rules which cover our Department. If the job should be declared open it would be bulletined in our office and would be filled within seven days. It is a position subject to Bulletin.

I signed one of the petitions in opposition to the Union Shop, which is Plaintiffs' Exhibit #2.

Q Why were you opposed to the Union Shop?

MR. KRAMER: Objection on the ground it is immaterial.

Overruled. Exception.
(DEFENDANT UNIONS' EXCEPTION #7.)

I oppose any organization, any type of organization by which I would be forced to join it against my will. As to whether I have any present intention of joining the Brotherhood of Railway Clerks of my own volition and free will, I will say that the only way I would join, if I had to do that to keep my job, I would do it. But I am opposed to any Labor Organization. I have held off for 29 years 16 days. My age is 45. I have worked for the Atlantic Coast Line Railroad for 29 years and 16 days, to be exact. During that time I have never had any complaints about my work not being satisfactory to the Atlantic Coast Line, and I am perfectly satisfied with the working conditions at the Atlantic Coast Line. I depend on my job at the Atlantic Coast Line for a livelihood, and have no other independent income. I have a family consisting of a wife and two children and their support is dependent on my income derived from my job, entirely. Most of my training and experience is railroad work; I have never worked anywhere except for the Atlantic Coast Line. It is my opinion that if I am unable to work for the Atlantic Coast Line that I would not be able to find work at comparable wages and earnings in this area. If the question is whether or not I have an opinion whether I could find work on another job in this area, I don't know whether I could or not. I have never tried. But I have an opinion on that matter.

MR. KRAMER: Objection. The man is not qualified to have a reliable opinion as he said he never tried, and he does not know. His opinion is purely speculative.

COURT: I expect some of us have some idea whether we could get a job.

Q It is a question of getting a comparable job, with equal pay?

COURT: The objection is overruled.
DEFENDANT UNIONS EXCEPT. (EXCEPTION #8.)

I still say the same thing I just said. I have not tried, and one doesn't know until one tries. I can't know anything until I make a try. That is a certain known fact. So far as I know I have not at any time been furnished by the Brotherhood of Railway Clerks with an opportunity to vote my desires on the Union Shop issue. The representatives of the Brotherhood of Railway Clerks have never mentioned the question to me as to what I thought about the Union Shop; I have never requested them to act in a negotiation of a Union Shop Agreement which would cover me.

It is a fact that, inasmuch as I am a plaintiff and have signed the petition in opposition to the Union Shop, that I do not want the Brotherhood of Railway Clerks to negotiate a Union Shop Agreement.

CROSS EXAMINATION

As to whether my position is subject to the Bulletin, I say that I can be replaced with one with more seniority. When I signed the petition to which Mr. Brooks referred, it was not presented to me. We passed it around, as Mr. Chisholm explained. It is a large office and no individual presents you with any particular thing. It was simply passed to me in the office; and then I passed it to someone else in the office. I am not a monthly rated employee but I am an hourly rated employee. It is a fact that my present rate of pay is several times what it was 29 years ago. As to whether it is more than twice what it was ten years ago, I cannot recollect, but I would say that it is not. I do not think that my present rate of pay is twice what it was ten years ago, but it is substantially larger; it has increased, but I don't say that it has doubled when it has not. My weekly earnings are substantially larger, although my hours of work have been reduced to 40. I did not negotiate with my employer for any of the increases which I have received. I have not negotiated with my employer for the reduction in hours of work

which I received. I have heard that the Brotherhood is doing that. I would not say that it was all on the part of the Brotherhood of Railway Clerks that we obtained the increases in wage and reduction in hours. The Atlantic Coast Line had to agree with them. Don't let us say the Brotherhood had to do it all.

Q Is it your understanding that the Brotherhood simply asked the Atlantic Coast Line for this increase and reduction of hours and the Atlantic Coast Line said: yes?

MR. McLENDON: Objection.

Sustained. DEFENDANT UNIONS EXCEPT. (EXCEPTION #9.)

I have not contributed to any of the expense of the Brotherhood of Railway Clerks. I have not contributed a thing. As to whether if I joined the Brotherhood I would have to pay the Brotherhood two dollars and something a month, I say that I don't know what I would pay them. I know they have annual dues, monthly dues, and assessments. The fact that I would have to pay whatever the dues are is not necessarily the reason I object to joining the organization. My objection is that I do not like to be forced to join. The fact that I would have to pay dues is not the reason that I object to joining the organization, as I answered you. I have testified that I did not request the Brotherhood of Railway Clerks to obtain a Union Shop Agreement. It is true that I testified that I obtained an increase in wages and a reduction in hours, but I never asked the Unions to do anything whatever for me.

REDIRECT EXAMINATION

We got a bulletin advising us that we would receive a pay increase about October 1, 1954, but I don't remember the exact date. I saw a bulletin advising me that I would be given certain increased health benefits and pay increases, but I could not say what date it was, but it has been very recent. I saw a subsequent bulletin advising that it could not be

given us because the Union Board had appealed to the Mediation Board to stop it.

RECROSS EXAMINATION

That was posted on the Bulletin Board where I work, and each individual in the office had one. I got my notice to that effect from the Chief Clerk.

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T. A. SHEPARD, JR. testified:

My address is 68 Azalea Drive, and I am one of the plaintiffs in this case. My duties with the Atlantic Coast Line in March, 1953, were those of a utility clerk in the Local Freight Office. There has been no change in my duties since that date. In March, 1953, and at all times subsequent thereto, I have been eligible for membership in the Brotherhood of Railway Clerks. The Brotherhood of Railway Clerks has, during that time, been the bargaining representative for the type of position which I have occupied. I was not a member of that Brotherhood in March, 1953, nor have I been a member at any time subsequent thereto. I have at one time been a member, back in 1937, I believe it was, when I joined. I stayed a member until sometime after the five-day week was effected, which was four or five years ago, I believe. I did not voluntarily resign or drop out.

The position which I occupied in March, 1953, and which I have just testified that I have thereafter filled, is subject to the Bulletining and Displacement Rules in the Department.

I signed the petition, which is Plaintiffs' Exhibit #2, in opposition to the Union Shop. The reason that I am opposed to the Union Shop is that I don't think it should be compulsory to join any Union to have the right to work, or to have to pay dues. I have no intention of joining the Brotherhood of Railway Clerks of my own accord. I am 39 years old and during the time that I have worked for the Atlantic Coast Line, I think my work has been satisfactory to the Railroad. I have been satisfied

with the working conditions at the Atlantic Coast Line and I depend on my job there for a livelihood. I do not have any independent income and I have a family to support, a wife and one boy. I have not had any other training or experience in any kind of work except that which I have acquired on my job with the Atlantic Coast Line.

Q If you are unable to work for the Atlantic Coast Line do you feel that you could get a job at comparable wages and benefits in this area?

MR. KRAMER: Objection.

OVERRULED: EXCEPTION.

(DEFENDANT UNIONS' EXCEPTION #10.)

A I don't think so.

I have not at any time been furnished by the Brotherhood of Railway Clerks with an opportunity to vote my desires on the matter of the Union Shop, and I have never been requested by the Brotherhood of Railway Clerks to express my views on the matter. I have never requested the Brotherhood to seek a Union Shop with the Atlantic Coast Line, and by virtue of the fact that I have signed this petition in opposition to the Union Shop, and brought this complaint, you can see that I am opposed to the Brotherhood and the Atlantic Coast Line entering into a Union Shop Agreement.

CROSS EXAMINATION

My membership in the Brotherhood of Railway Clerks terminated because I was assessed a $5.00 assessment and would not pay it, and they would not take my dues. That happened right after the five-day week was put in; they said it happened because it was of so much expense. At that time it was simply a question of the assessment why my membership terminated in the Brotherhood of Railway Clerks. I do not recall how long the five-day week was in process of proceedings before boards and one thing and another. At the time I was a member of the organization I did not attend local Lodge meetings

regularly, I think that I attended not over three meetings a year. At none of those meetings did I hear the question of Union Shop discussed, and at none of the meetings that I attended was it mentioned.

When I signed the petition to which Mr. Brooks referred, I do not remember who presented it to me. My position at that time was that of Utility Clerk. The person who presented the petition to me was not anyone in our office and I do not recall what position he held other than in our office. As to the petition, I signed it and passed it around to the other Clerks in the office while I was working at the Atlantic Coast Line. My wages now are about twice what they were about ten years ago and our hours are 8 hours per day, 40 hours a week, 8 hours a week less. And those changes in pay and those hours were obtained by agreements between the Unions and the Atlantic Coast Line. I did not myself seek any of them.

CROSS EXAMINATION

I do not know which of those wage increases the Atlantic Coast Line would have willingly granted without the Union. I saw the bulletin posted about October 1, 1954, advising me that I would receive a pay increase and increased health benefits. I saw the one subsequently posted, advising that it would not be given me because the Union Board had appealed to the Mediation Board.

RECROSS EXAMINATION

As to whether I know of any increase in wages or improvements in my working conditions put in by the Atlantic Coast Line without bargaining efforts by the Unions, I say that I don't know. If I say "no," you want me to say "no," and it will be assumed that the Unions got all the raises, and I don't know whether they did or not. I testified that I did not have an opportunity to vote concerning my desires about the Union Shop. Since I have not been a member, I did not vote concerning anything else the Union has sought to obtain.

MR. BROOKS: Mr. Chisholm would not be included in the Bulletin and Displacement Rules under the Company's counter-proposal, but would be under the Clerks' proposal.

COURT: Is it agreeable that the record may be corrected?

All counsel agree that it may be.

PLAINTIFFS REST.

COURT: The motions made yesterday at the time the plaintiffs tentatively closed their evidence are renewed and brought forward.

MR. ROUNTREE: I am not sure - I have never been in a case like this before, nor have you, your Honor - I am not sure whether I should lodge a motion for nonsuit, demur ore tenus or move for dismissal. The defendant Unions move for judgment as of nonsuit, subject to the right to correct the motion at any time.

MR. KRAMER: I want at this time to move to dismiss as to all the Union defendants except the American Train Dispatchers Association, the Order of Railroad Telegraphers, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and the Brotherhood of Maintenance of Way Employees.

Except as to those Unions, I move the complaints be dismissed as to all the others on the ground that no one has testified, and there is no plaintiff who works in any of the other Crafts, and the contracts those other Unions have, do not affect in any way the Crafts the plaintiffs occupy.

Motions denied. DEFENDANT UNIONS EXCEPT. (DEFENDANT UNIONS' EXCEPTION #11.)

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L. L. WOOTEN (RECALLED) testified:

CROSS EXAMINATION

I testified earlier in this proceeding. I recall testifying concerning a strike ballot concerning the Union Shop. I testified that the Exhibit offered might have been circulated and

received back; that is to say, the strike ballot concerning the Union Shop. I wish to correct that at this time. That particular ballot was not received or distributed, nor was it voted on, but a similar ballot with the same names on it was distributed in 1953 and voted on. That ballot was not concerning the Union Shop; it was concerning the Health and Welfare Fund. There has been no ballot distributed on the Atlantic Coast Line concerning a Union Shop by the Brotherhood of Railway Clerks. I have been General Chairman of that organization since February 1, 1921.

Q Were any increases in the wage rate or changes of hours given by the Atlantic Coast Line other than at the Unions' suggestion?
MR. McLENDON: Objection.
COURT: I will sustain the objection, but let his testimony go in the evidence.
DEFENDANT UNIONS EXCEPT.
(DEFENDANT UNIONS' EXCEPTION #12.)

Q If it were proper to ask you whether or not any wage increases or changes in hours rules were given by the Atlantic Coast Line without a request and long expensive negotiations and proceedings by the Union, what would your answer be?
A There has never been any wage increase granted the contract covered employees without negotiations and as requested from the Unions. There has never been any changes in rules of a beneficial nature requested by the railroad. The only rule changed that have been requested by the railroad has been of a detrimental nature, after the Union had requested beneficial rules; except that the railroad requested a rule that would take away the seniority of all employees when they reach the age of 70 years.

Q In the last ten years have any wage increases other than one been granted without proceedings before an Emergency Board.
MR. McLENDON: Objection.
COURT: Sustained.
DEFENDANT UNIONS EXCEPT. (UNIONS' EXCEPTION 13.

(If allowed to testify, witness would have replied: "Not so far as I know there has never been any wage increase offered by the Company.")

Q I said without proceedings before an Emergency Board?
MR. McLENDON: Objection.
COURT: Sustained.
DEFENDANT UNIONS EXCEPT.
(DEFENDANT UNIONS' EXCEPTION #14.)
(If allowed to testify, witness would have said: "So far as I know there have been none obtained in any other way than before the Emergency Board.")

Q Was there not one increase of 12½¢ you obtained after a year and a half negotiation and mediation about three years ago?
MR. McLENDON: Objection.
COURT: SUSTAINED.
DEFENDANT UNIONS EXCEPT.
(DEFENDANT UNIONS' EXCEPTION #15.)
(If allowed to testify, witness would have said: "That was when the escalator clause was put in effect as the result of an Emergency Board, and taking effect January 1, 1951.")

IT IS STIPULATED that the Union Shop movement was initiated at the request of each of the individual Union defendants early in February, 1951.

IT IS FURTHER STIPULATED that initial conferences with the Union defendants concerning these proposals were held by the defendant Atlantic Coast Line, and each of the defendant Unions separately.

RECROSS EXAMINATION

I distributed a strike ballot on the Atlantic Coast Line concerning the Health and Welfare Plan. I don't remember the exact date of the ballot, it was tabulated in 1953. As to whether that was considerably more than a year after the date of the Union Shop ballot, I say it took ninety days. I gave you the date of the tabula-

tion and not the date of the distribution. As to the date of the ballot, and not the date of tabulation, I say that the date of the ballot was, I think, four or five months prior to December, 1953. I do not have a copy of the ballot with me, but I think I could get it, and I will try to get it.

MR. KRAMER: I object to Mr. Brooks' seeing the ballot. If he wants the date to test Mr. Wooten's credibility, he could get the date. It is no concern of Mr. Brooks what communications the Unions have with their members. I have no objection to the witness giving Mr. Brooks the date.

COURT: As I understand it, you desire to examine the ballot to see if the testimony of the witness is borne out by the ballot.

MR. BROOKS: Yes, sir.

MR. KRAMER: They are considered highly confidential, and they are not given to them voluntarily.

COURT: In view of the testimony and the correction today, and the request, I expect he should be permitted to examine it.

WITNESS: I am not positive we have a copy of the ballot. We do have a tabulation of the ballot. We generally destroy the ballots.
(Witness is withdrawn for the present.)

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D. A. FOSTER testified:

I am General Chairman of the Dispatchers on the Atlantic Coast Line. The American Train Dispatchers took a secret vote of the Dispatchers on the Atlantic Coast Line concerning their wishes for a Union Shop, before making a proposal to obtain one. The majority of the secret ballots indicated a desire for a Union Shop.

CROSS EXAMINATION

That ballot was only submitted to the Union members of the Dispatchers Association. I do not remember the date that that ballot was taken. I did not send out the ballot. They mailed it out from the National Headquarters in Chicago; I don't remember the date. As to the year, it was 1951 or 1952. I don't remember exactly the date; I can't pinpoint the date any closer. I do not have a copy of the ballot; that is in Chicago at the National Headquarters. I do not believe that I have any records at my office that would indicate the date, although I am General Chairman. About all the information I can give is that it was in either 1951 or 1952. I don't remember the exact date, and I would have to go to the National Headquarters in Chicago to get it.

This was not a strike ballot. It was merely a canvass to determine the sentiments of our members. The reason why we solicited the members' views on this subject, is that our organization acts differently from other organizations in that respect. We take the members in consideration in cases of that kind. The General Chairman or the National Organization do not order a strike or take a movement of this kind on itself without first conferring with the members. It is the view of the National Executives in our Union that they feel that the wishes and desires of our members on a matter of this importance should be ascertained before we make demands on their behalf. As to whether I think that is the proper thing to do, I say that I don't know about that. That is handed down to us. With respect to a document identified as Atlantic Coast Line Exhibit #2 now handed me entitled "Official Strike Ballot," which is directed to the members and employees represented by:" and there follows a list of Unions, and included in that list is the American Train Dispatchers Association, and it is dated St. Louis, Missouri, November 20, 1952, I say that, to my knowledge, this ballot was

never distributed by the Train Dispatchers Organization. I do not remember ever seeing it before; in fact, I have never seen it before, and I say that I did not receive one of them.

REDIRECT EXAMINATION

Yesterday, or the day before, we stipulated concerning the number of our members in our Union on the Atlantic Coast Line, and, according to the last notice I received from National Headquarters, there were 63 members. That was a month ago. About two years ago it was approximately the same thing. It fluctuates a little. We get an off-season and the youngest man has to go to a lower Craft. The number of Dispatchers regularly employed by the Atlantic Coast Line in 1952 must have been between 70 and 80, and that number is about the same.

RECROSS EXAMINATION

It was not approximately the same number in 1950. We only had about 60 in 1950, as I remember. Some of them dropped out, and some got promoted, and some could not pay their dues.

CASE FOR DEFENDANT UNIONS.

COURT: I think I should rule now on some of the objections to the Stipulation of Facts, that I withheld rulings on, so that we will know where we are.

MR. KRAMER: With respect to paragraph 8, we stipulate the statements were correct, but not material and we objected to them.

COURT RULES AS FOLLOWS:

COURT: I will overrule the objections with respect to paragraph 8.
DEFENDANT UNIONS EXCEPT.
(DEFENDANT UNIONS' EXCEPTION #16.

(2) Paragraph 10; overruled; exception.
(DEFENDANT UNIONS' EXCEPTION #17.)

Paragraph 11; sustained.

(3) Paragraph 12; objection overruled; exception.
(DEFENDANT UNIONS' EXCEPTION #18.)

(4) Paragraph 13, I will admit the constitutions. There is no question that they are correct copies, is there?

MR. KRAMER: There is no question that they were correct at the time, but some of these Unions have had conventions, and I am sure there are changes, but I don't think they are material to this action.

COURT: I will admit them. Objection overruled. Exception.
(DEFENDANT UNIONS' EXCEPTION #19.)

(5) Paragraph 14; objection overruled; exception.
(DEFENDANT UNIONS' EXCEPTION #20.)

COURT: I think that covers all the exceptions or objections to the Stipulation of Facts.

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L. L. WOOTEN (RECALLED) testified:

EXAMINATION By Mr. Barnhill

I have secured a copy of the strike ballot which I say that I was talking about when I said one had been spread, yesterday. I also testified that this ballot which I said was already spread, was issued sometime in 1953, but I don't know whether the date on it is the date or not. I can't see whether it was for May 22, 1953, or not. Looking at "A" where it says, "Request of the Organization for working conditions and Rule improvements as specified in the notice of May 22, 1953," it must have been taken for 1953. We do not issue strike ballots before we serve notice on the railroads. As to whether any notice was served in May, 1953, I say that it says, "Notices transmitting these proposals were served on the proper officials of the Carriers throughout the country on May 22, 1953." I suppose this was issued sometime after May, 1953. I have testified that it was

tabulated in December, 1953, and that is all I can testify to. It is true that the ballot shows in the middle of the first page that it was issued in 1953. It has the numerals 1953, but it does not show whether that was the year or not. It was the strike ballots of the Systems listed, and said the Atlantic Coast Line is one of those organizations.

I would like to see the ballot to testify from, if you are going to call my attention to the strike ballot about which I testified yesterday, and which was identified as Atlantic Coast Line's Exhibit #2. In the middle of the first page of the Union Shop Ballot there is a statement of its purpose. There is a printed statement there of just what the ballot is about, that it was about the National Union Shop, and Check Off of Dues Movement. There is no such statement on the first page of the first ballot. Not in the Union Shop, but on the matters contained in that strike. It does not state what the matters contained therein are. As to whether I had an opportunity to examine this ballot yesterday, I say that I looked at it, and was asked if it was spread, and I said if it was spread it was by us, but I could not remember having anything to do with it, but it looked so similar to this ballot - as to the wording of the ballot. When I checked our lists last night, I found that we had not received and spread that ballot, and that it was this one. I testified yesterday that there had been seven strike ballots spread.

The ballot which I have produced today is distributed as a ballot of Fifteen Cooperating Organizations, and the one with respect to the Union Shop relates to Seventeen Organizations. This says seventeen. The strike ballot on the Health and Welfare Plan was April, 1953, and was after the issuance of a restraining order in this action. This says, "Official Strike Ballot." The following ballot has been agreed to as the official strike ballot by the Fifteen Cooperating Railway Labor Organizations;

it is dated 1953, and is the official strike ballot of the organizations named on the first page thereof. This ballot is identified as A.C.L. Exhibit #3.

MR. BARNHILL: The defendant Atlantic Coast Line would like to offer in evidence a proposal addressed to Mr. W. S. Baker, by certain named Labor Organizations, and identified as A.C.L. Exhibit #1, dated March 27, 1953, this being a proposal for the adoption of a Union Shop Agreement, served upon the Carrier on the date shown.

A.C.L. EXHIBIT #1 IS OFFERED IN EVIDENCE.

MR. BARNHILL: The defendant Atlantic Coast Line also offers in evidence official Circular and Strike Ballot of the Seventeen Cooperating Labor Organizations participating in the National Union Shop and Check Off of Dues Movement inaugurated by Notices served upon Carriers in the United States on or about February 5, 1951, and which ballot is dated November 20, 1952, and which has been identified as A.C.L. Exhibit #2.

MR. BARNHILL: The defendant Atlantic Coast Line offers in evidence an official Strike Ballot entitled "Report of Chief Executive of Fifteen Cooperating Railway Labor Organizations participating in the Joint National Rules Movement, and dated 1953, and heretofore identified as A.C.L. Exhibit #3.

ATLANTIC COAST LINE R.R. RESTS.

COURT: Is there any rebuttal evidence?
MR. McLENDON: No, sir.

All Motions renewed as of nonsuit, and motion for judgment dismissing the action, and to dissolve the present Temporary Injunction.

All motions overruled. Defendant Unions except. (DEFENDANT UNIONS: EXCEPTION #21.)

COURT: I understand it is agreed that I may

take the case under advisement and make my findings of fact and conclusions of law and enter such Order as is necessary as of today, and as of this moment, and as of this place. All counsel agree.

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ASSIGNMENTS OF ERROR

The Defendant Unions, appellants, group exceptions and assign error as follows:

ASSIGNMENT OF ERROR 1: That the lower Court erred in admitting, over objection and exception of the defendant Unions, irrelevant and immaterial evidence, which is the basis of the Defendant Unions' EXCEPTIONS 1, 2, 3, 4, 5, 7, 8, 10, 16 through 20 (R pp 8, 9, 10, 11, 12, 14, 15, 16).

ASSIGNMENT OF ERROR 2: That the lower Court erred in failing to admit certain material, relevant and competent evidence offered on behalf of the defendant Unions, over the objection and exception of the defendant Unions, which is the basis of the defendant Unions' EXCEPTIONS 9, 12, 13, 14, 15 (R pp 12, 13).

ASSIGNMENT OF ERROR 3: That the lower Court erred in making certain Findings of Fact without competent evidence to support such findings or against the weight of the evidence, over the objection and exception of the defendant Unions, which is the basis of the defendant Unions' EXCEPTIONS 22 through 30 (R pp 25, 26, 27, 28).

ASSIGNMENT OF ERROR 4: That the lower Court erred in failing to find certain suggested findings, offered by the defendant Unions, which were competent, material, and proper for the lawful disposition of the case, over the objection and exception of the defendant Unions, which is the basis of the defendant Unions' EXCEPTIONS 31 through 38 (R pp 29, 30, 44).

ASSIGNMENT OF ERROR 5: That the lower Court

erred in holding that the laws of the State of North Carolina are applicable to such a controversy as this involving employee-employer relationship on an interstate Carrier, governed by the Railway Labor Act (U.S.C.A. 151, et seq.), which is the basis of the Defendant Unions' EXCEPTIONS 39, 41, 42, 43 (R pp 45, 48, 49, 52).

ASSIGNMENT OF ERROR 6: That the lower Court erred in holding the consummation of the proposed Union Shop Agreement would violate the Federal Constitution and Federal Law, which is the basis of the Defendant Unions' EXCEPTIONS 40, 41, 42, 43 (R pp 45, 48, 49, 52).

ASSIGNMENT OF ERROR 7: That the lower Court erred in overruling the Defendant Unions' Demurrer ORE TENUS based on the ground that the action was prematurely brought, which is the basis of the Defendant Unions' EXCEPTIONS 21, 42, 43 (R pp 17, 49, 52).

ASSIGNMENT OF ERROR 8: That the lower Court erred in holding that the Defendant Unions, in attempting to negotiate a Union Shop contract were exceeding their lawful authority as collective bargaining representatives, which is the basis of the Defendant Unions' EXCEPTIONS 1, 2, 7, 40, 43 (R pp 8, 11, 45, 52).

ASSIGNMENT OF ERROR 9: That the lower Court erred in failing to dismiss the action as to all Defendant Unions, other than the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, American Train Dispatchers Association, Brotherhood of Railway Carmen, and Order of Railroad Telegraphers, because there was no evidence that anyone represented by the Unions other than the named Unions were represented by the named plaintiffs or objected to the negotiation of a Union Shop Contract, which is the basis of the Defendant Unions' EXCEPTIONS 11, 21, 42 (R pp 12, 17, 49).

ASSIGNMENT OF ERROR 10: That the lower Court

erred in failing to dismiss the action as to certain of the plaintiffs, to wit, Hudson, Binkley, Rackley, and DeVane, because they could not be adversely affected by the proposed Union Shop Contract, which is the basis of the Defendant Unions' EXCEPTIONS 6, 21, 42 (R pp 10, 17, 49).

ASSIGNMENT OF ERROR 11: That the lower Court erred in signing the Judgment of record, which is the basis of the Defendant Unions' EXCEPTIONS 6, 21, 43 (R pp 10, 17, 52).

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STIPULATION IN RESPECT TO EXHIBITS

It is stipulated between counsel for all parties that the Exhibits offered by the several parties may be made a part of the Record on appeal in the form of an appendix to the Record, containing copies of the Exhibits, where practicable in the opinion of the Supreme Court Clerk, otherwise, nine copies of the several Exhibits shall be filed in the Supreme Court, with the Supreme Court Clerk.

STIPULATION OF COUNSEL IN RESPECT OF THE RECORD

It is stipulated between counsel for all parties that the foregoing shall constitute the transcript and record on appeal in this cause.

BROOKS, McLENDON, BRIM & HOLDERNESS
BY: Thornton H. Brooks
McCLELLAND AND BURNEY
BY: R. S. McClelland
Counsel for Plaintiffs.

M. V. BARNHILL, JR.
POISSON, CAMPBELL & MARSHALL
BY: Alan A. Marshall
Counsel for Defendant
Atlantic Coast Line Railroad Company.

SCHOENE AND KRAMER
ROUNTREE & ROUNTREE
BY: George Rountree, Jr.
Counsel for the Defendant Unions.

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(TRANSCRIPT CERTIFIED BY CLERK SUPERIOR COURT)

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## APPENDIX

STIPULATION OF FACTS (No. 8635)

It is hereby stipulated, consented and agreed by and between the parties hereto, by their undersigned counsel, that for the purpose of this action the following facts shall be taken as true and correct; and that the documents referred to in this Stipulation, or photostatic copies thereof, may be offered in evidence as authentic and genuine. It is understood, however, that the entry of this Stipulation is subject to the following conditions: (1) Any party may object to the introduction in evidence of any of such facts, documents or exhibits on the grounds of immateriality or irrelevancy; and (2) All parties reserve the right to introduce further and additional evidence not inconsistent with the facts herein stipulated.

1. The named Plaintiffs are each citizens and residents of the County of New Hanover, State of North Carolina. They are each regular, permanent employees of the Defendant Atlantic Coast Line Railroad Company (herein referred to as Defendant Carrier). Their accumulated seniority with the Defendant Carrier and the dates of their initial employment are:

| | |
|---|---|
| E. C. Hudson | 10 May 1908 |
| L. J. DeVane | 15 November 1914 |
| W. R. Chisholm | 18 January 1917 |

| | |
|---|---|
| J. M. Tilley | 19 October 1925 |
| T. A. Shepard, Jr. | 2 October 1935 |
| J. M. Binkley | 4 December 1936 |
| H. L. Darden | 17 November 1937 |
| I. E. Rackley | 28 November 1939 |
| J. H. Shannon | 17 March 1941 |
| C. W. Poisson | 15 September 1950. |

2. The action is brought for and on behalf of the named Plaintiffs individually as well as in a representative capacity on behalf of each and all other persons of a class to which they belong and which is similarly situated, said class consisting of a number of fellow employees of Defendant Carrier. Each member of the class has a common or general interest in this action and the named Plaintiffs fairly represent the class in the prosecution of this action.

3. Defendant Carrier is a corporation with its principal office and place of business in Wilmington, North Carolina, and it operates its business as a common carrier on an extensive basis within the State of North Carolina, and in other states, and among said states. It is a "carrier" as defined in the Railway Labor Act (U. S. Code, Title 45, Section 151, et seq.).

4. Defendant Carrier, in the performance of the normal operations of its business, employs in the State of North Carolina a large number of persons, including the named Plaintiffs and others similarly situated. It employs at its offices, shops and places of business in North Carolina, among others, workers in the following classifications: machinists, boilermakers, blacksmiths, sheet metal workers, electrical workers, railway carmen, firemen, oilers, roundhouse and shop laborers, clerks, freight handlers, express and station employees, maintenance of way employees, telegraphers, signalmen, restaurant employees, and train dispatchers.

5. The Defendants, International Association

of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Blacksmiths, Drop Forgers and Helpers; Sheet Metal Workers' International Association; International Brotherhood of Electrical Workers; Brotherhood Railway Carmen of America; International Brotherhood of Firemen and Oilers; Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of Maintenance of Way Employees; The Order of Railroad Telegraphers; Brotherhood of Railroad Signalmen of America; Hotel and Restaurant Employees and Bartenders International Union; American Train Dispatchers Association (herein collectively referred to as Defendant Unions), are each an unincorporated labor association or organization, known in labor parlance as craft unions, and composed respectively of machinists; boilermakers; blacksmiths; sheet metal workers; electrical workers; railway carmen; firemen, oilers, helpers, roundhouse and shop laborers; clerks, freight handlers, express and station employees; maintenance of way employees; telegraphers; signalmen; restaurant employees; train dispatchers; and others. Each of the Defendant Unions has among its membership employees of the Defendant Carrier in the State of North Carolina. The Defendant Unions perform in the County of New Hanover, State of North Carolina, many of the acts and purposes for which they were formed, as, for example: organizing and associating together some of the employees of the Defendant Carrier who perform work in the classification of their respective crafts; accepting into their membership those employees of the Defendant Carrier who belong to their respective crafts and who desire to become members of the respective craft unions; negotiating agreements on behalf of the respective crafts concerning rates of pay, rules, and working conditions; and participating in efforts to settle all disputes on behalf of the employees in their respective crafts. Each of

the Defendant Unions is a standard railway labor organization organized in accordance with the provisions of the Railway Labor Act and is and at all times material to this case has been the duly designated and authorized representative pursuant to that Act of the employees of the Defendant Carrier of its respective class or craft.

6. Defendant Unions, each being a craft union, together are known as the non-operating unions of the Defendant Carrier. The named Plaintiffs herein, and their fellow employees of a class whom they represent and who are similarly situated, are either regular members of one or the other of the defendant labor organizations or are eligible for membership therein, and will be covered and bound by the terms of any agreement entered into between the aforesaid defendant labor organizations and the Defendant Carrier. Specifically, the Plaintiff Hudson is a member of the Defendant American Train Dispatchers Association; the Plaintiff Binkley is a member of the Defendant Brotherhood of Railway Carmen of America; the plaintiff Rackley is a member of the Defendant Order of Railroad Telegraphers; the Plaintiff DeVane is a member of the Defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; the Plaintiffs Tilley, Shepard, Chisholm, Darden and Shannon are each eligible for membership in the last mentioned union; and the Plaintiff Poisson is eligible for membership in the Defendant Brotherhood of Maintenance of Way Employees.

7. From February 5, 1951, to the date of the commencement of this action, the Defendant Unions have sought to obtain from the Defendant Carrier a union shop agreement. To this end the Defendant Unions have served written notices upon the Defendant Carrier under Section 6 of the Railway Labor Act, have conferred with its representatives, have utilized the services of the National Mediation Board, and

appeared before and presented their proposals to a Presidential Emergency Board in 1952 pursuant to Section 10 of the Act. Throughout such negotiations the Defendant Carrier has declined to enter into a union shop agreement. Pursuant to a request made by the Defendant Unions in March, 1953, further conferences between their representatives and the Defendant Carrier over the formers' request for an agreement containing a union shop were held in Wilmington, North Carolina, on April 22, 1953. At said conference the Defendant Unions presented for adoption by the Defendant Carrier a written form of union shop agreement which was identical in substance with the form of agreement entered into by Defendant Unions with other carriers in the United States. A copy of said agreement is attached, and incorporated by reference, as PLAINTIFFS' EXHIBIT 1. No agreement upon a union shop section was reached on April 22 and further negotiations on the subject have been stayed by the issuance of the temporary restraining order in this action on April 23.

8. A number of the employees of the defendant carrier who are members of the classes or crafts represented by the Defendant Unions, including the named plaintiffs herein, are opposed to the principles of a union shop agreement. Prior to the institution of this action a petition entitled "OPPOSITION TO UNION SHOP," a copy of the form being attached and made a part hereof by reference - PLAINTIFFS' EXHIBIT No. 2 - was signed by approximately 1,580 employees of the Defendant Carrier. The existence of this petition was made known to the Defendant Carrier by a letter dated and mailed on April 16, 1953, from the Chairman of the Employees' Committee in Opposition to the Union Shop to an officer of the Defendant Carrier - PLAINTIFFS' EXHIBIT 3; and receipt of this communication was acknowledged by a letter from said officer of the Defendant Carrier dated April 18, 1953 - PLAINTIFFS' EXHIBIT 4.

In April, 1953, there were approximately 77 employees of the Defendant Carrier who were members of, or eligible for membership in, the Defendant American Train Dispatchers' Association. Prior to April 15, 1953, a petition or letter - PLAINTIFFS' EXHIBIT 5 - was signed by 53 of these employees, and on that day one of the named plaintiffs herein, Irvin E. Rackley, a member of that labor organization, transmitted by mail the original of said petition to the President of the Union at Chicago, Illinois, and photostatic copies to the General Chairman of that association, D. A. Foster, at his office in Wilmington, N. C., and to the Defendant Carrier in Wilmington. By letter dated April 17, 1953, Mr. Foster acknowledged receipt of the letter and petition.

9. The Defendant Unions were certified by the National Mediation Board, or recognized by the Defendant Carrier, as representatives of the employees of the Defendant Carrier for their representative classes or crafts, as follows:

(a) International Association of Machinists - certificate No. R-231 issued by the National Mediation Board, Washington, D. C., on January 13, 1937.

(b) International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America - certificate No. R-441 issued by the National Mediation Board, Washington, D. C., on March 30, 1938.

(c) International Brotherhood of Blacksmiths, Drop Forgers and Helpers - The date and number of the representation certificate issued by the National Mediation Board, if any certificate was issued, is unknown. Representation of this craft of employees by this Brotherhood was first recognized in agreement dated December 11, 1940.

(d) Sheet Metal Workers International Asso-

ciation - certificate No. R-441, issued by the National Mediation Board, Washington, D. C., on March 30, 1938.

(e) International Brotherhood of Electrical Workers - certificate No. R-532, issued by the National Mediation Board, Washington, D. C., on July 24, 1939.

(f) Brotherhood Railway Carmen of America - certificate No. R-468 issued by the National Mediation Board of June 25, 1938.

(g) International Brotherhood of Firemen and Oilers, Helpers, Powerhouse and Railway Shop Laborers - certificate No. R-532 issued by the National Mediation Board on July 24, 1939.

(h) Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees - certificate No. R-1808 issued by the National Mediation Board on October 30, 1947.

(i) Brotherhood of Maintenance of Way Employees - representation of this class of employees has never been in dispute; therefore, no representation certificate has been issued by the National Mediation Board. Representation was recognized in Agreement between the Director General of Railroads in respect of Railroads in Federal Operation and Employees thereon represented by the United Brotherhood of Maintenance of Way Employees and Railway Shop Laborers, effective December 16, 1919. The name of the latter-named organization was changed to Brotherhood of Maintenance of Way Employees during the year 1925, and representation of this class of employees of Defendant Company by the Brotherhood is still in effect.

(j) The Order of Railroad Telegraphers - certificate No. R-331 issued by the National Mediation Board, Washington, D. C., on May 24, 1937.

(k) Brotherhood of Railroad Signalmen of America - certificate No. R-1189, issued by the National Mediation Board on January 22, 1944.

(l) Hotel and Restaurant Employees' International Alliance and Bartenders' International League of America - certificate No. R-838 issued by the National Mediation Board on February 6, 1942.

(m) American Train Dispatchers Association - certificate No. R-1621 issued by the National Mediation Board on July 1, 1946.

(n) System Federation No. 42, Railway Employes' Department of the A. F. of L., (representing employes in the Reclamation Plant of the Purchasing Department at Savannah, Georgia) - No representation certificate covering this class of employes has ever been issued by the National Mediation Board. Representation of this class of employes was changed from the Brotherhood of Maintenance of Way Employes to System Federation No. 42 between representatives of each of these organizations and the company in conference June 23, 1942, which understanding was confirmed in letter agreement of July 15, 1942, between the two organizations and the Company.

No elections for bargaining representatives have been conducted by the National Mediation Board among the foregoing classes or crafts subsequent to the dates set forth, nor have any requests or demands for elections or changes in certifications been made on that Board subsequent to said dates.

10. One of the Defendant Unions, Brotherhood of Railway and Steamship Clerks, sent through the mails, or otherwise distributed, to all of its officers and members employed by the Defendant Carrier the following general letters, one, PLAINTIFFS' EXHIBIT 6, marked "Special," was dated March 27, 1951, and the

second, PLAINTIFFS' EXHIBIT 7, marked "General Letter No. 454," and dated April 1, 1953.

11. Some of the Defendant Unions, together with several other recognized standard railroad labor organizations, own "LABOR," a national weekly newspaper published at Labor Building, 10 Independence Avenue, S.W., Washington, D.C. "LABOR" is not conducted for profit and does not accept paid advertising of any kind; it is conducted to disseminate news regarding, and to promote the interests of, railroad labor unions which own it. Some of the Defendant Unions which own "LABOR" distribute copies of "LABOR" to its members, including their members who work for the Defendant Carrier. The following article appeared in the May 2, 1953, issue of "LABOR," Vol. XXXIV, No. 40:

"FULL SUPPORT OF UNION SHOP FIGHT PLEDGED
ORT Votes All-Out Battle And Reaffirms
Aim to Seek Greater Benefits

Special Correspondence

"ST. LOUIS, April 29 - International officers and general chairmen of the Railroad Telegraphers, at a special meeting here this week, pledged support for any steps needed to secure a quick windup of the national union shop drive.

"Other activities of the organization also were reviewed, and strong approval was voiced of the program followed by President G. E. Leighty.

"High point of the meeting came when Leighty reported on the wide success of the 17 'non-operating' unions in blanketing the country with a uniform union shop agreement. Only a few major holdouts remain, principally the Santa Fe in the West and the Atlantic Coast Line in the Southeast.

"New Pacts

"Winning more union shop contracts, 'non-operating' unions this week continued their 'cleanup' on short lines and other properties. Latest agreements cover these carriers: Chattanooga Station, Meridian Terminal, Ogden Union Railway and Depot, Atlanta Terminal, and New Jersey, Indiana & Illinois.

"Also, the Railway Clerks announced signing of union shop agreements with the East Portland Freight Terminal, Texarkana Union Station Trust, and Macon Terminal, covering the Clerks' jurisdiction.

"Pledge Full Backing

"When Leighty warned that it might be necessary to exercise the economic strength of the organizations on those two systems most of the officers present immediately volunteered their full-time service subject to the president's call.

"A count showed 54 such volunteers ready for service in the territory of the Atlantic Coast Line and 57 on the Santa Fe.

"The officers also discussed the policy approved at the last convention for gaining other improvements in working agreements to bring them into line with benefits enjoyed by workers in other industries.

"Progress in Canada Cited

"Motions were adopted assuring the president of the support of the subordinate divisions at any time he is prepared to move with other rail labor organizations to achieve such goals.

"Officers present from Canadian divisions of the union gave a favorable report on the operation of the check-off rule which was secured there in lieu of the union shop.

"They reported the position of the organization in Canada has been greatly strengthened by this rule, after difficulties of

reconciling it with the laws of the union had been met."

The following article appeared in the May 30, 1953, issue of "LABOR," Vol. XXXIV, No. 44:

"RAPS CARRIER USE OF 'DUPES' IN UNION SHOP SUITS

"DIEHARD interests in the railroad industry were assailed this week by President G. E. Leighty of the Railroad Telegraphers for their efforts to block union shop agreements on the few remaining roads which have not yet signed such pacts with the 'non-operating' unions.

"Leighty, who heads the joint negotiating committee of the 'non-ops,' pointed out that these diehards are thumbing their noses at the Railway Labor Act and the procedures set up by Congress for resolving labor-management disputes. They are seeking to raise again all of the issues that were thrashed out in Congressional debate and before a Presidential Emergency Board.

"'They are doing so,' Leighty added, 'in the face of the fact that almost 90 per cent of the more than one million employes in the 'non-operating' crafts are now under union shop protection. All this is the result of agreements reached in collective bargaining, following all procedures of the law, with the great majority of the nation's carriers.'

"Moreover, Leighty stressed, the diehards are using individual employes, who undoubtedly do not realize, the responsibility they are assuming, as 'fronts' in a new attack upon the union shop in the courts.

"By going to court with demands for restraining orders, these individual employes of the hold-out roads are causing a financial loss to the unions. This will entail some

responsibility on their part when the unions are upheld in court, union leaders point out.

"Also, they contend, when the restraining orders are lifted and the union shop agreements are found valid, some of these individuals may find that they have done themselves out of their jobs. The restraining orders prevent any firings while they are in effect, but that won't be the case after the orders are lifted.

"Leaders of the unions emphasize that the employes involved are taking a serious risk and assuming a grave responsibility when they allow themselves to be duped by the interests really responsible for the suits."

No subsequent issue of "LABOR" carried a correction or change of the foregoing news items appearing in the issues of May 2, 1953, and May 30, 1953.

12. The plaintiff employees, and other members of their class, have acquired certain employment rights of value by reason of their original contract of employment and subsequent service with the Defendant Carrier, and by reason of the contracts negotiated by the Defendant Unions with the Defendant Carrier covering their respective class or crafts. Among such rights are: Seniority, applied in bidding for positions or jobs with preferred hours and rates of pay and in layoffs and recalls when there has been a reduction in work force; vacations, the extent of which depends upon their seniority in the service; holidays; and benefits as voluntary members in the Relief Department. The Railroad Retirement Act (U.S.C. Title 45, Section 228(a), et seq.) vests rights to retirement or pension benefits in the employees of Defendant Carrier.

13. Attached hereto, and made a part hereof by reference, are the constitutions, by-laws and applications of the Defendant Unions which are in force and effect at the time of the institution of this action:

| | | |
|---|---|---|
| Plaintiffs' Exhibit | 8 | Constitution of Machinists |
| " | 9 | Application for Membership in Machinists |
| " | 10 | Constitution of Boilermakers |
| " | 11 | Constitution of Blacksmiths |
| " | 12 | Constitution of Sheet Metal Workers |
| " | 13 | Application for Membership in Sheet Metal Workers |
| " | 14 | Constitution of Electrical Workers |
| " | 15 | Application for Membership in Electrical Workers |
| " | 16 | Constitution of Railway Carmen |
| " | 17 | Application for Membership in Railway Carmen |
| " | 18 | Constitution and By-Laws of Firemen and Oilers |
| " | 19 | Application for Membership in Firemen and Oilers |
| " | 20 | Constitution of Clerks |
| " | 21 | Application for Membership in Clerks |
| " | 22 | Obligation of Clerks |
| " | 23 | Constitution and By-Laws of Maintenance of Way Employees |
| " | 24 | Application for Membership in Maintenance of Way Employees |
| " | 25 | Oath of Maintenance of Way Employees |
| " | 26 | Constitution of Railroad Telegraphers |
| " | 27 | Application for Membership in Railroad Telegraphers |
| " | 28 | Oath of Railroad Telegraphers |
| " | 29 | Constitution of Railroad Signalmen |
| " | 30 | By-Laws of General Committee and Subordinate Lodge on the Atlantic Coast Line, Local 84. |
| " | 31 | Application for Membership in Railroad Signalmen |
| " | 32 | Constitution of Hotel and Restaurant Employees |
| " | 33 | Application for Membership in Hotel and Restaurant Employees |
| " | 34 | Constitution and By-Laws of American Train Dispatchers |

14. The "operating employees" (engineers, conductors, brakemen, etc.) of the Defendant Carrier, although represented by various labor organizations, are not covered by a union shop agreement. The two organizations representing the engineers and firemen of the Defendant Carrier have requested a union shop agreement for their crafts but no demand for a union shop has been made by the other two operating unions.

This first day of November, 1954.

/s/ L. P. McLendon
/s/ Thornton H. Brooks
/s/ R. S. McClelland
Attorneys for the Plaintiffs.

/s/ M. Kramer
/s/ Rountree & Rountree
Attorneys for the Defendant Unions.

/s/ M. V. Barnhill, Jr.
/s/ Alan A. Marshall
Attorneys for the Defendant Carrier.

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FILED
NOV 13 1955
WILLEY, Clerk

IN THE

# Supreme Court of the United States

October Term, 1955

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No. 517

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EDWIN COURTNEY HUDSON, ET AL., *Petitioners,*

v.

ATLANTIC COAST LINE RAILROAD COMPANY; INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
*Respondents.*

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## STATEMENT OF RESPONDENT UNIONS ON PETITION FOR CERTIORARI

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MILTON KRAMER
LESTER P. SCHOENE
SCHOENE AND KRAMER
1625 K St., N. W.,
Washington 6, D. C.
*Counsel for Respondents*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

# Supreme Court of the United States

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EDWIN COURTNEY HUDSON, ET AL., *Petitioners,*

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## STATEMENT OF RESPONDENT UNIONS ON PETITION FOR CERTIORARI

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We believe that whether a writ of certiorari should be granted in this case is simply a matter of the administrative convenience of the Court.

We submit that the decision below, by the Supreme Court of North Carolina, is so clearly the correct decision that no substantial contention can be made to the contrary. But in holding that Congress could validly supersede state legislation with respect to the validity of union shop negotiations and agreements on

interstate railroads, the court below reached a conclusion diametically opposite to that reached by the Supreme Court of Nebraska in *Hanson* v. *Union Pacific Railroad Co.*, 160 Nebr. 669, 71 N.W. 2d 526. The *Hanson* case is pending in this Court on appeal as *Railway Employes' Department* v. *Hanson*, No. 451. The Jurisdictional Statement in that case was filed in this Court on October 7, 1955, and no responsive document has been filed.

Whether review of the Nebraska holding should be had in the *Hanson* case alone, or whether the obviously correct but contrary decision in North Carolina in this case should also be reviewed by certiorari and consolidated with the appeal in the Nebraska case, are questions simply of the administrative convenience of this Court.

Respectfully submitted,

MILTON KRAMER
LESTER P. SCHOENE
SCHOENE AND KRAMER
1625 K St., N. W.,
Washington 6, D. C.
*Counsel for Respondent Unions*

FILED
DEC 12 1955
HAROLD B. WILLEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

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No. 517

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EDWIN COURTNEY HUDSON, ET AL., *Petitioners*

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ATLANTIC COAST LINE RAILROAD COMPANY;
INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
*Respondents.*

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## Statement of Respondent Atlantic Coast Line Railroad Company on Petition for Certiorari

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M. V. BARNHILL, JR.,
Wilmington, N. C.
*Counsel for Respondent Railroad*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

No. 517

EDWIN COURTNEY HUDSON, ET AL., *Petitioners*

v.

ATLANTIC COAST LINE RAILROAD COMPANY; INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL., *Respondents.*

## Statement of Respondent Atlantic Coast Line Railroad Company on Petition for Certiorari

The respondent Atlantic Coast Line Railroad Company believes that the Petition for Writ of Certiorari filed by the plaintiffs below should be granted in this Court, and joins in the prayer that a Writ of Certiorari issue to review the judgment of the Supreme Court of North Carolina entered in the above cause on October 12, 1955 (Appendix to Petition, pp 1-25), reversing the judgment of the Superior Court of the State of North Carolina, in and for the County of New Hanover (R., pp 63-64), and ordering a final judgment in favor of respondents.

## OPINIONS BELOW

The findings of fact and conclusions of law of the Superior Court appear in the Record at Pages 51-63. The opinion of the Supreme Court of North Carolina is printed in the petitioners' Appendix at Pages 1-25 and is reported in 242 N. C. 650.

## JURISDICTION

The jurisdiction of this Court is stated in the petition. In addition the Federal questions herein presented were put in issue by the Amended Complaint and the answer filed by the defendant unions thereto. These questions were passed upon by the trial Court and decided in favor of petitioner. The trial Court's conclusion of law No. 4 reads as follows:

> "The agreement proposed on 22 April, 1953, by the Defendant Unions to the Defendant Carrier, if consummated, would deprive the plaintiffs, and members of the class whom they represent in this action, of individual property rights of value and liberties protected and guaranteed by and under the Constitution of the United States, the Consitution of the State of North Carolina, and federal and state laws, statutory and common." (R., pp 62-63.)

The respondent unions challenged the decision of the trial Court in their exceptions on appeal to the Supreme Court of North Carolina, and the Federal questions involved were argued in the briefs and orally before the Supreme Court of North Carolina by all three parties. The judgment of the Supreme Court of North Carolina is final by its terms.

## QUESTIONS PRESENTED

1(a) Does an act of Congress (Sec. 2 Eleventh of the Railway Labor Act) purporting to legalize compulsory union membership in the railway industry, striking down conflicting State laws, constitute governmental action?

(b) Is governmental action involved in the intervention of the Executive Department of the Federal Government through Presidential Emergency Fact Finding Board No. 98, and its finding, pursuant to Section 2 Eleventh of the Railway Labor Act, that Congress has settled the compulsory union membership issue on the railroads, and recommending that such an arrangement be instituted throughout the industry?

(c) Is governmental action involved in the demands for a union shop agreement by the respondent unions pursuant to the purported authority of Section 2 Eleventh of the Railway Labor Act and in their capacity as statutory collective bargaining agents under Sections 2 Second and 2 Fourth of the Railway Labor Act, by reason of which the respondent railroad is compelled by Federal law to bargain with the respondent unions on this issue?

2. Does compulsory union membership sought to be imposed with the aid of the legislative and executive branches of the Federal Government violate petitioning plaintiffs' right to work without the imposition of any unreasonable or arbitrary condition, contrary to the Fifth Amendment to the Constitution of the United States?

3. Does compulsory union membership sought to be imposed with the active legislative and executive assistance of the Federal Government violate the petitioning plaintiffs' right to freedom of association, with its accompanying right of choice, and including the right not to join as well as the right to join a private organization, contrary to the First and Fifth Amendments to the United States Constitution?

4. Whether the Constitutional issues herein presented were properly raised in the State Court, where the pleadings set forth demands for the execution of compulsory union membership agreements which would deprive petitioners of their right to work except upon condition that they join and remain members of one of the unions, and specifically charged that petitioners would thereby be deprived of rights under the Federal Constitution, and where the issues of violation of petitioning plaintiffs' right to work and freedom of association contrary to the First and Fifth Amendments to the United States Constitution were fully argued by all parties before the trial Court and the Supreme Court of the State of North Carolina.

## STATEMENT OF THE CASE

Complaint was filed by petitioners on April 23, 1953 (R., p 51) against the respondent Atlantic Coast Line Railroad Company, and the respondent labor organizations, which are 13 unions, authorized representatives of the employees within their respective crafts or classes. A restraining order was sought to prevent the railroad and the unions from entering into a union shop agreement whereby membership in one of the unions would be a condition of continued employment for the plaintiffs and their fellow employees. The Superior Court of North Carolina issued a temporary restraining order on the date the complaint was filed, restraining the respondent railroad and the respondent labor organizations from demanding or executing a union shop agreement affecting the petitioning employees, from demanding or seeking a union shop agreement, or from taking measures to force such an agreement. (R., pp 13-15.) An amended complaint was filed in September 1953, to which both the respondent railroad and the respondent unions filed answers. (R., pp 16, 31, 36.) The action was tried in the Superior Court of North Carolina, resulting in an order making permanent temporary injunction theretofore granted. (R., pp 51-62.)

Prior to January 10, 1951 the Railway Labor Act prohibited the union shop or check-off of union dues, or both. Section 2 Fourth. On January 10, 1951 Section 2 Eleventh of the Railway Labor Act became effective, and purported to authorize specifically agreements between carriers and labor organizations, requiring as a condition of continued employment, that all employees shall become members of the labor organizations representing their craft or class. On and after February 5, 1951 the respondent labor organizations have sought to obtain from the respondent railroad a union shop agreement covering all the non-operating employees of the railroad, and including plaintiffs herein. They served written notices upon

the railroad, utilized the services of the National Mediation Board, and negotiated with the railroad directly. The question was presented to a Presidential Emergency Fact Finding Board, Board No. 98, which found that Congress had settled the issue of compulsory union membership on the railroads, and accordingly recommended that such an arrangement be instituted throughout the industry.

Thereafter the respondent labor organizations agreed upon a form of union shop contract identical with that entered into between other carriers in the United States and the respondent unions. The union shop agreement was presented to the railroad duly signed by the proper officials of the respondent unions on April 22, 1953 (R., p 58), indicating that a strike would be called if the agreement was not promptly executed. (The necessary permission or consent for a strike ballot had previously been obtained from headquarters of all the respondent unions, and an official strike ballot and circular had been prepared and printed by them, dated 20 November 1952, and same was ready for spreading when needed.) (R., pp 57-58.)

The Superior Court of North Carolina found that the petitioning plaintiffs and the other members of their class have acquired certain employment rights of value by reason of their original contract of employment and subsequent service with the respondent railroad, that they will be deprived of such rights under the terms of a union shop agreement unless they join one of the respondent labor organizations within the prescribed time limits. (R., pp 59-60.) The Superior Court of North Carolina also found that the proposed union shop agreement, if consummated, would deprive the petitioning plaintiffs and other members of their class of liberties protected and guaranteed under the Constitution of the United States. (R., p 63.) The Superior Court further found that plaintiffs have no adequate remedy at law and have suffered and will suffer

irreparable injury unless the defendants are permanently enjoined and restrained. (R., p 63.)

Pursuant to these and other findings of fact and conclusions of law, the Superior Court of North Carolina issued a final injunction on November 5, 1954. (R., pp 63-64.) The respondent labor organizations appealed from this order, and on October 12, 1955 the Supreme Court of North Carolina, by a majority opinion, reversed the judgment and dissolved the restraining order.

The Supreme Court of North Carolina held that a union shop agreement would be void under the North Carolina Statute (G. S. 95-78 to 84, inclusive) except that Congress had occupied the field by its adoption of Section 2 Eleventh of the Railway Labor Act. Since it found Section 2 Eleventh within the power of Congress to regulate commerce among the several states, it found the union shop agreement proposed by the respondent labor organization not to be illegal. In effect, the decision of the North Carolina Supreme Court dismissed the contentions of the petitioning plaintiffs with respect to the constitutional issues here presented.

## REASONS FOR GRANTING THE WRIT

The Atlantic Coast Line Railroad Company, although a defendant in the action below and a respondent herein, joins in the petition of plaintiffs for Writ of Certiorari to the Supreme Court of North Carolina because of the anomalous position in which the decision of that Court has left this respondent. The railroad is faced on the one hand by an adamant demand for a union shop agreement, a demand which will certainly result in a costly strike unless satisfied, and on the other hand by a firm insistence on the part of the plaintiffs that such an agreement is unlawful and deprives them of constitutional rights. Such a position was supported by the decision of the Superior Court below, and by the decision of the Supreme

Court of Nebraska in *Hanson v. Union Pacific Railroad Company*, 160 Nebraska 669, 71 N. W. 2d 526 (1955). The Hanson case is also pending in this Court on appeal as *Railway Employees Department v. Hanson*, No. 451. The jurisdictional statement in that case was filed in this Court on October 7, 1955. If the issues here presented are not decided in this Court, respondent will have to choose between a long and expensive strike and a multiplicity of damage suits by its aggrieved employees. Respondent feels and respectfully submits that there are real, substantial and important issues which can and should be decided in this action.

In addition, as pointed out in the Petition for Writ of Certiorari, the decision of the Supreme Court of North Carolina in the instant case concerns substantially the same issues involved in No. 451, *Railway Employees Department v. Hanson*. In the Hanson case (supra) the Supreme Court of Nebraska approved the issuance in the lower Court of an injunction against a union shop clause substantially identical with that here involved, on the ground that the union shop amendment to the Railway Labor Act violated the provisions of the Constitution of the United States. This direct conflict between the decisions of the Nebraska Court and the North Carolina Court was recognized by the opinion below. The petition in this case should be granted in order that the decision of the North Carolina Supreme Court will be reviewed by this Court at the same time that it reviews the appeal in No. 451, supra.

1.

**Is Governmental Action Involved in a Compulsory Union Shop Agreement Adopted Pursuant to the Railway Labor Act?**

There would seem to be a substantial question concerning governmental action in any state of the United States, where the unions demanding a compulsory union shop agreement

are the statutory collective bargaining agents with whom the employer is compelled by law to bargain, and whose representation the minority employees are compelled by law to accept, through Section 2 of the Railway Labor Act. It would seem that the unions occupy a semi-governmental status through their enjoyment of this statutory privilege. Moreover, governmental action is further demonstrated through the intervention of the Executive Department of the Federal Government, through Presidential Emergency Fact Finding Board No. 98, and its finding, pursuant to Section 2 Eleventh of the Railway Labor Act, that Congress has settled the issue of compulsory union membership on the railroads, and recommending that such an arrangement be instituted throughout the industry. Governmental action becomes even clearer where it is exercised in a state such as North Carolina, where the action proposed by the union violates both the public policy and the statute law of the State as exemplified in the so-called Right to Work Act. The unions' argument that their action is merely that of a private party, and that there is no constitutional sanction against any agreement proposed by such a private party, loses all of its force, if any it had, when it becomes necessary for the unions to rely upon the Act of Congress to avoid the effect of the State law, which even they admit would prevent the action they propose, in the absence of Section 2 Eleventh of the Railway Labor Act. A compulsory railway union shop agreement is not possible in the State of North Carolina except through the intervention of Congress in striking down the North Carolina statute. Existence of governmental action in such a case seems patent.

2.

**Does Compulsory Union Membership Violate the Petitioners' Right to Work Without the Imposition of any Unreasonable or Arbitrary Condition, Contrary to the Fifth Amendment to the Constitution of the United States?**

The requirement of union membership seems to have no relationship whatever to interstate commerce. Whether an individual employee is or is not a member of a union affects only his own relationship with the union, not the movement of interstate commerce. Moreover, the unions have admitted that they do not need, and indeed do not acquire any additional *power* as statutory bargaining agents by means of the additional captive members forced into the unions with the assistance of Section 2 Eleventh. Mr. George M. Harrison, International President of the Brotherhood of Railway and Steamship Clerks, etc., was the principal spokesman for all the unions in the hearings before the Congressional Committees, considering the union shop Amendment to the Railway Labor Act. Mr. Harrison testified in part as follows:

"The standard railway labor unions represent the employees on about 95 or 96 per cent of the total railroad mileage of the country. They hold a maximum of 4,432 contracts on 99 per cent of the mileage in the United States. It runs from 99 per cent on down to 85, for a few of them, but most of them are in the 95 per cent. My own union, representing 300,000, holds 131 contracts. We represent the employees on 234,921 miles of railroad, and that is 99 per cent of the total railroad mileage in the United States. That picture regarding my union is substantially the picture for the industry." (Hearings before a Subcommittee of the Committee of the Committee on Labor and Public Welfare on S. 3295, 81st Congress, 2d Session, p. 14, (1950).)

At the hearing before the House Committee, Mr. Harrison was asked whether the union shop would strengthen the unions in industry-wide bargaining. He replied:

"No; I do not think it would affect the power of bargaining one way or the other, Congressman Harris.

. . .

"If I get a majority of the employees to vote for my union as the bargaining agent, I have got as much economic pow-

er at that stage of development as I will ever have . . . ." (Hearings before Committee on Interstate and Foreign Commerce on H. R. 7789, 81st Congress, Second Session, pp 20-21, 1950.)

At a later point in his testimony, Mr. Harrison said:

"I would say that the industry is *completely* under collective labor agreements, covering all of the employees." (Hearings before Committee on Interstate and Foreign Commerce on H. R. 7789, 81st Congress, Second Session, p. 36, 1950.) (Emphasis supplied.)

The importance of these statements appear when put in their proper context—the unions have been able to blanket the entire railroad industry completely with collective agreements *without* the union shop. Their growth under a system of *voluntary* unionism has been phenomenal, but not even their present membership is united on *compulsory* unionism.

The principal reason advanced for a union shop (by the unions), at least before Congress, is their "right" to collect from each member of the craft or class a fee for representing such member, on the claim that "free riders" are not paying their fair share of the cost of such representation. Therefore, it would seem that Congress is regulating, not interstate commerce, but the relationship of railroad employees with their collective bargaining representative. A Congressional Act, which for no more substantial reason, strikes down State law prohibiting compulsory union membership seems a clear violation of the First Amendment in denying to railroad employees their right of association, and of the Fifth Amendment in depriving railroad employees of property rights without due process of law.

The right to work is surely a liberty guaranteed by the Constitution of the United States. It is no answer to say, as the unions do, that the right to work does not include the right to work for a particular employee, where both the em-

ployer and its employees will be forced, unless the unions be enjoined, to submit to an agreement (unwanted by either) through economic force exerted by the unions, and bolstered by all the power of the legislative and executive agencies of the United States Government.

3.

**Does Compulsory Union Membership, Imposed With the Active Legislative and Executive Assistance of the Federal Government, Violate the Petitioners' Right to Freedom of Association, with its Accompanying Right of Choice, and Including the Right Not to Join as Well as the Right to Join a Private Organization, Contrary to the First and Fifth Amendments to the United States Constitution?**

Section 2 Eleventh of the Railway Labor Act goes further than to require the payment of an assessment, dues or fees to the unions. It provides in part:

> "(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees *shall become members* of the labor organization representing their craft or class. . . ." (Emphasis supplied.)

It is certainly debatable whether an employee may satisfy the terms of a union shop agreement, or the terms of Section 2 Eleventh, by simply tendering initiation fees, dues or assessments. The statute in terms requires actual membership in the union, and so does the union shop agreement proposed by the respondent unions to the respondent railroad. In addition the same Mr. Harrison who has been quoted hereinabove, testified before the Committee of the House of Representatives that the unions for whom he spoke intended to make all railroad employees become members of the unions representing their craft or class, as witness the following exchange between Congressman Dolliver and Mr. Harrison:

"Mr. Dolliver: Of course, you implicitly recognize that this law does involve some coercion upon the present railway employees who are non-union at the present time; I mean it coerces them to join the union.

Mr. Harrison: The proposed bill?

Mr. Dolliver: Yes; that is what I mean.

Mr. Harrison: Well, you can put it that way and say there is coercion. *I would say it would fix an absolute duty in its compulsion, not only coercion.* We intend to make them get in. Let us not have any misunderstanding.

Mr. Dolliver: That is the purpose of this legislation?

Mr. Harrison: That is what we intend to do." (Hearings before Committee on Interstate and Foreign Commerce on H. R. 7789, 81st Congress, Second Session, p. 38, 1950.) (Emphasis supplied.)

Therefore, railroad employees are clearly denied any choice in their association with these several unions.

It may be stated generally that, in order to satisfy a union shop agreement, an employee must sign the constitution and by-laws and *agree to be bound thereby.* Among the requirements of some of the constitutions and by-laws[1] of the respondent unions are provisions regulating the manner in which the members shall vote in State and Federal elections, and prohibiting interference by the members with legislative matters affecting national, state, territorial, dominion or provincial legislation adversely to the interest of the members. (It does not appear by whom the determination of "adverse interest" will be made, but it can certainly be assumed that such determination will not be by the offending member.) The member must carry out instructions of union officer, and he must not speak falsely or maliciously of another member or

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[1]The constitution and by-laws of respondent unions were introduced in evidence as a part of a Stipulation of Facts entered into by all three parties. (Plaintiffs' Exhibit 1; R., pp 76, 156-169.)

vilify his character. (It is the union management which will determine *when* a member has spoken falsely or maliciously.) See particularly constitution of Brotherhood of Railway Carmen, Subordinate Lodge Constitution Section 9, Grand Lodge Constitution Section 67, Subordinate Lodge Constitution Section 90, Subordinate Lodge Constitution Section 134. (Plaintiffs' Exhibit 16.)

In the case of International Association of Machinists (Plaintiff's Exhibit 8), the Grand President is authorized to call a strike on his own motion, pending submission of the matter to the Executive Council, in extreme emergency. In other cases the strike may be approved by the Executive Committee without reference to the members. Article 20, Section 1. A member is also subject to fine, expulsion or both for attempting to inaugurate any "dual movement." Article 14, Section 2. Presumably this forbids a union member from belonging to another union or encouraging the organization of any other union. As to the Clerks Organization, of which Mr. Harrison, the union spokesman, is President, the President has the power to suspend a member for violation of constitutional laws (which he interprets), subject to appeal to the Grand Executive Council (which he controls), and appeal to the Grand Lodge (which meets every four years). Constitution, Article 13, Section 11(a). He can assign a member "to perform a duty or specific task." Constitution, Article 13, Section 15. He determines the Brotherhood's policy with respect to national legislation. Constitution, Article 23, Section 2. He has authority to order a strike (Constitution, Article 13, Section 23), and he can expel a member for not obeying a strike order (Protective Law, Article 2, Section 4). His disciplinary power includes reprimand, suspension, expulsion, and fine, with no limit upon the fine prescribed. (Plaintiffs' Exhibit 20.)

The constitutions and by-laws of the unions are full of similar restrictions which clearly indicate that a member as-

sumes an obligation which is quite extensive, and which includes a promise of obedience to union laws and directives, a surrender of his right of free expression, a surrender of his right to choose any other organization, and a surrender of his right to associate peacefully with his fellow employees. In fact it seems passably clear from the constitutional provisions herein referred to, that the unions exact of their members a far higher degree of loyalty and blind obedience than has ever been exacted of employees by American management.

In fact the United States Government affords its dissident and sometimes traitorous citizens a far greater freedom of speech and of association than the unions grant even to their *loyal* members.

That these provisions present real, substantial and important issues seems clear beyond possible contradiction. An Act of Congress which subjects unwilling citizens to the unbridled power of private organizations should certainly be reviewed in this Court.

4.

**The Constitutional Questions Here Presented Were Properly Raised in the Court Below.**

The Supreme Court of North Carolina appears to have misunderstood the basis for the plaintiffs' complaint. It was alleged that a union shop agreement is in violation of the North Carolina Right to Work Act and therefore enjoinable. In anticipation of the unions' defense, resting upon Section 2 Eleventh of the Railway Labor Act, the plaintiffs also alleged that Section 2 Eleventh of the Railway Labor Act is unconstitutional and therefore unavailable to the unions as a *defense*, but this was not made a basis for the plaintiffs' claim for relief, which rested entirely upon the North Carolina Act. The constitutional issues involved in any consideration of Section 2 Eleventh were referred to in the complaint. It was not nec-

essary that they should have been, as they did not form a basis of plaintiffs' claim for relief.

Section 1-159 of the General Statutes of North Carolina, reads as follows:

> "Allegations not denied, deemed true.—Every material allegation of the complaint not controverted by the answer, and every material allegation of new matter in the answer, constituting a counterclaim, not controverted by the reply is, for the purposes of the action, taken as true. But the allegation of new matter in the answer, *not relating to a counterclaim*, or of new matter in reply, is to be deemed controverted by the adverse party as upon a direct denial or avoidance, as the case requires." (Emphasis supplied.)

It has not been considered necessary, in North Carolina State court practice, to reply to new matter in the answer which does not constitute a counterclaim and on which no claim for relief is asserted against the plaintiff. See *Williams v. Hutton and Buorbonnais Company*, 164 N. C. 216, 80 S. E. 257, (1913); *Town of Dunn v. Tew*, 219 N. C. 286, 13 S. E. 2d 536 (1941); *Clapp v. Clapp*, 241 N. C. 281, 85 S. E. 2d 153, (1954). Moreover, this Court has held that an allegation that aircraft never attained a taxable situs within Nevada, and hence a State ad valorem tax imposed a burden on interstate commerce, was sufficient to raise a question under the due process clause of the Fourteenth Amendment, although neither the Fourteenth Amendment nor due process were specifically mentioned by the complainant: "Though inexplicit, we consider the due process issue within the clear intendment of such contention and hold such issue sufficiently presented." *Braniff Airways v. Nebraska State Board*, 347 U. S. 590 at 599 (1954). See also Stern and Gressman, Supreme Court Practice (2d ed., BNA, 1954) pages 82-85. The allegations of the complaint were certainly sufficient under these authorities. In addition neither the respondent unions nor the respondent railroad could possibly claim any disadvantage or surprise, since the

constitutional questions presented were thoroughly debated both in the trial Court and in the Supreme Court of North Carolina, and were passed upon by the trial Court and in effect passed upon by the Supreme Court of North Carolina. The case is properly before this Court and respondent railroad respectfully submits that it ought to be here decided.

## CONCLUSION

The instant case involves serious and substantial questions concerning a conflict between individual freedom and collective coercion, the latter of which is to be accomplished through the active intervention of the executive and legislative branches of the United States Government. Such a substantial issue should not be permitted to go by default, without the active consideration of the Supreme Court of the United States.

Respectfully submitted,

M. V. BARNHILL, JR.,
Wilmington, N. C.
*Counsel for Respondent Railroad*

In The

# Supreme Court of the United States

October Term, 1955

No. 517

Edwin Courtney Hudson, Et Al.,
*Petitioners,*
v.
Atlantic Coast Line Railroad Company; International Association of Machinists, Et Al.,
*Respondents.*

## REPLY OF PETITIONERS TO STATEMENTS OF RESPONDENT UNIONS AND RAILROAD

The Respondent Unions in their Statement on Petition for Certiorari, filed herein, state that the Supreme Court of North Carolina "in holding that Congress could validly supersede state legislation with respect to the validity of union shop negotiations and agreements on interstate railroads, the Court below reached a conclusion dimetrically opposite to that reached by the Supreme Court of Nebraska in *Hanson* v. *Union Pacific Railroad Co.*, 160 Nebr. 669, 71 N.W. 2d 526." The Respondent Unions' Statement leaves the distinct impression that the sole issue for determination by this Court is whether Congress could, by the enactment of the 1951 amendment to the Railway Labor Act, validly supersede the North Carolina "Right-to-Work Act." The Respondent Unions have, in effect, incorporated by reference the contents of their Jurisdictional Statement filed in No. 451, *Railway Employes' Department* v. *Hanson* (probable jurisdiction noted, 5 December 1955). They have thereby carried over into this case the illusory presentation of the issues which they advanced in *Hanson*. Such an impression and presentation is clearly erroneous. Important constitutional issues are presented for consideration and determination by this Court.

The Respondent Unions clearly set forth in their brief before the Supreme Court of North Carolina the question involved to be as follows:

> "Whether the consummation of a union shop agreement between defendant Unions and defendant Carrier would deprive plaintiffs of rights under the Constitution of the United States."

In their brief before that Court the Respondent Unions argued at length that there were no "constitutional rights protected against infringement by private contracts. All of the provisions of the Constitution of the United States are directed to governmental action. None of the prohibitions of the Federal Constitution are aimed at purely private action such as that involved in the negotiation and execution of a private contract or in the exercise of economic sanctions in the effort to secure a desired contract" (p. 21). Further, the Respondent Unions argued that the plaintiffs had failed to establish "that they had any rights or liberties under the Federal Constitution or Laws, which protected them from the effect of a union shop agreement signed in conformity with the Railway Labor Act, as amended" (p. 24).

The plaintiffs-appellees (petitioners herein) in their brief before the Supreme Court of North Carolina argued that Section 2, Eleventh of the Railway Labor Act, as amended, violated the First and Fifth Amendments to the Constitution of the United States (pp. 38-55). The plaintiffs pointed out that if Section 2, Eleventh involved governmental action then the resultant compulsory union membership was admittedly violative of the Federal Constitution. It pointed out that "Lester P. Schoene, Esq., counsel for the appellant unions, stated to the Presidential Emergency Board on December 11, 1951: 'Now, of course, Congress could not make it (the union shop) mandatory'—Transcript of Proceedings of Emergency Board 98, Vol. 1, page 16."

The Respondent Unions then filed a Supplemental Brief in the Supreme Court of North Carolina in which it amplified its views concerning the constitutional issues involved. They argued that "Section 2, Par. Eleven of the Railway Labor Act is a valid exercise of the Commerce Power even if it is Governmental action resulting in some restriction on the Freedom Rights of the plaintiffs—Freedom of Speech and Freedom of Assembly." Further, the Respondent Unions there argued that "the broad powers of the Commerce Clause are sufficient to support the Act permitting Union Shop Agreements against the Due Process test of the Fifth Amendment, insofar as it may be said to prohibit impairment of contract by the Federal Government."

Notwithstanding the position that the Respondent Unions took before the Supreme Court of North Carolina it seeks now to narrow the issues in both this and the *Hanson* case to one of federal pre-emption in the field. Thus, at page 9 of their Jurisdictional Statement in No. 451, the Unions say that the "essence" of the opinion of the Supreme Court of Nebraska is that Section 2, Eleventh, of the Railway Labor Act "offends against due process limitations" simply by reason of the fact that in that statute "Congress pre-empted the field and overrode state laws."

That is not a fair statement of the Nebraska decision. No federal law is unconstitutional for the sole reason that it supersedes and replaces conflicting State law, and the Nebraska court did not so hold. Certainly, if the federal statute is valid it replaces the state law in conflict with it, but not otherwise. What the court did hold was that the federal law is invalid, and that in the absence of a valid federal statute the state law in the field governs. It ruled that there was "government action" in the conduct sought to be enjoined which, if not restrained, would deprive the non-union employees of the Union Pacific of the right to work and freedom of association guaranteed them by the First and Fifth Amendments to the Federal Constitution.

The decisive question in the *Hanson* case, and in the instant case, is whether the federal statute is constitutional.

This is not to say that the factor of pre-emption of the field by Congress in Section 2, Eleventh, is not very important to this case. It is of great significance in connection with what counsel for the unions argued before the Supreme Court of North Carolina to be a critical question—that relating to "government action." It is Petitioners' position that there is "government action" at every turn in this case, and one of the clearest points at which it appears is that where Congress has swept aside all present and prospective conflicting state law. Were it not for this pre-emption, the unions would be precluded from a union shop contract by the Nebraska "right-to-work" law in the *Hanson* case and by the North Carolina "right-to-work" law in the instant case. In these, as in the other "right-to-work" States, the federal statute is essential to the position of the unions.

As noted, when the union shop controversy was before Emergency Board No. 98, appointed by President Truman under the provisions of 49 U.S.C. § 160, counsel for the unions expressly conceded that Congress "could not make it [the signing and enforcement of union shop agreements] mandatory." This concession, of course, was that if there were "government action"—which there clearly would be if the statute were cast in mandatory terms—then the statute would be unconstitutional.

The issues in this case are not as the Respondent Unions have sought to present them. They might be expressed in this way:

1. Is there not "government action" requiring decision of constitutional questions where—

a) Congress has passed a statute affirmatively legalizing compulsory unionism, in the form of a union shop, for the railroad industry, and striking down all conflicting state laws;

b) Congress added the statute to existing railroad labor legislation with the intention of thereby bringing about a nation-wide union shop in the railroad industry;

c) Where a labor union, invested by Congress with a special status as a statutory collective bargaining agent, demands, obtains, and then seeks to enforce a union shop pursuant to the explicit statutory authorization by Congress; and

d) Where the Executive Department of the Federal Government, acting on the theory that Congress had established a governmental policy favoring a nation-wide union shop on the railroads, recommends and pressures the railroads to enter into the union shop form of compulsory unionism?

2. When a man is forced to join and pay money to a labor union as a condition of continued employment, has he not been deprived unconstitutionally of the right to work and freedom of association guaranteed him by the First and Fifth Amendments to the Constitution of the United States?

3. When a man is fired from his job solely because of his refusal to join and pay his money to a labor union, has he not been deprived unconstitutionally of the right to work and freedom of association guaranteed him by the First and Fifth Amendments to the Constitution of the United States?

4. When a man is forced against his will to pay his money to a labor union in order to hold his job, is he not thereby deprived of his property in violation of the due process guaranty of the Fifth Amendment?

Respondent unions have also made it appear that these cases involve only a question of policy, and they quote from certain isolated opinions to support this contention. But in none of the cases cited by Respondents was there any question about the constitutionality of compulsory union-

ism under sanction of Congress. If government-sponsored compulsory unionism is constitutional, then whether or not Congress should sponsor it is a question of policy for it rather than the courts to settle. But if it is not constitutional then no amount of Congressional policy can breathe validly into it. The issues here, as just outlined, question the constitutionality of compulsory unionism by sanction of the government, and it is those issues which Petitioners believe are presented in their case and in the *Hanson* case and should be determined by this Court after a full hearing.

The Court would profit by having the instant case as well as the *Hanson* case before it when it passes on the question of the constitutional validity of compulsory unionism imposed under the express authority of a federal statute. This case would add materially to the completeness of the picture. In *Hanson*, the employer has signed a union shop agreement, thereby lending to the agreement whatever sanction comes from the right of an employer to select and retain his employees. But in the instant case the employer has not signed a union shop agreement, does not want to sign such an agreement, and will not sign unless compelled to do so. Consequently, this case presents the question whether Congress can authorize the unions to force compulsory unionism on unwilling employers as well as on unwilling employees. The importance and significance of this additional facet of the problem presented by this case but not by *Hanson* is self-evident.

Respectfully submitted,

THORNTON H. BROOKS
L. P. MCLENDON
Greensboro, North Carolina

R. S. MCCLELLAND
Wilmington, North Carolina

*Counsel for Petitioners*

January 4, 1956.